County of Loudoun

Department of Planning

MEMORANDUM

DATE:

March 4, 2009

TO:

Ginny Rowen, Project Manager

Land Use Review

FROM:

Marie Genovese, AICP, Planner

Community Planning

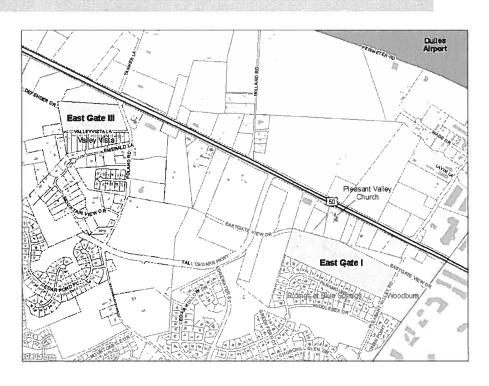
SUBJECT: ZCPA 2008-0010, East Gate One Proffer Amendment

ZCPA 2008-0011, East Gate Three Proffer Amendment

Second Referral

BACKGROUND

EG Development, LLC is Zoning requesting Plan Concept Amendment (ZCPA) to amend the proffers associated with the East Gate I (ZMAP 2004-0020) and East Gate III (ZMAP 2005-0003) rezoning The applications. properties both are located south of Route 50 with the East Gate I property located south of East Gate View Drive and the Pleasant Valley Church. north of the Ridings at Blue Springs residential neighborhood. and west of Pleasant



Valley Road and the approved but unbuilt Woodburn residential development (ZMAP 2005-0044) and the East Gate III property located west of Poland Road and north of the Valley Vista subdivision (see Vicinity Map). The East Gate I property consists of approximately 37.24 acres zoned R8 and R16 (Residential) and the East Gate III

property consists of approximately 17.52 acres zoned R16 both properties governed under the provisions of the <u>Revised 1993 Zoning Ordinance</u>.

The applicant has responded to Community Planning's first referral dated January 21, 2009 and has addressed all issues. However, staff understands the Department of Building and Development recently requested an updated cost estimate¹ for the cost of constructing the Route 50 improvements proffered with the East Gate I and East Gate III rezonings. Upon approval by Building and Development, this amount should be included under the cost equivalency portion of the proffers. Staff defers to the Office of Transportation Services regarding amendments to the proffer language to address the updated cost estimate.

Additionally, minor comments associated with the East Gate III Proffer Amendment (ZCPA 2008-0011) are provided below:

- East Gate III Proffer VC2c states "As used in these proffers, the term "open to traffic" shall mean that the improvements are open to the public for use, but have not yet been accepted into the VDOT system for maintenance". As the Regional Road Improvements included in the amended proffers pertain to two traffic signals and the dedication of right-of-way, staff is unsure why this proffer has been included.
- East Gate III Proffer VFa discusses cash equivalent contributions in lieu of actual construction for transportation improvements described in proffers VC1a, VC1b, and VC1c. Staff notes that Proffer VC1c pertains to the reservation of Defender Drive and does not include construction.

RECOMMENDATIONS

Staff has no issue with the requested Zoning Concept Plan Amendment to amend the East Gate I and East Gate III proffers allowing the applicant to provide a cash equivalent contribution in lieu of the previously approved Route 50 transportation improvements. Staff recommends approval of the application provided the applicant revises the proffers to address an updated cost estimate for the previously approved Route 50 transportation improvements.

cc: Julie Pastor, AICP, Director, Planning
Cynthia Keegan, AICP, Program Manager, Community Planning via e-mail

¹ Staff notes the latest cost estimate for the cost of constructing the third westbound lane for Route 50 was estimated to be \$1,525,000. However, current cost estimates would likely be higher as this estimate was dated September 28, 2006.

County of Loudoun

Department of Planning

MEMORANDUM

DATE:

January 21, 2008

TO:

Ginny Rowen, Project Manager

Land Use Review

FROM:

Marie Genovese, AICP, Planner

Community Planning

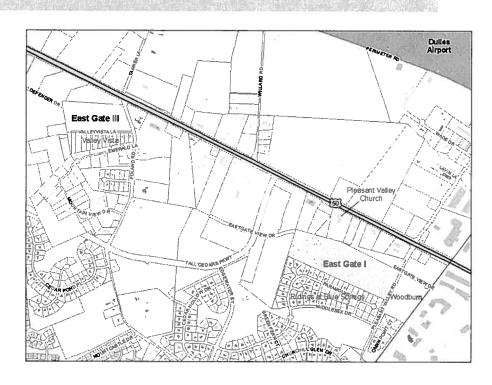
SUBJECT:

ZCPA 2008-0010, East Gate One Proffer Amendment

ZCPA 2008-0011, East Gate Three Proffer Amendment

BACKGROUND

EG Development, LLC is requesting а Zoning Concept Plan Amendment (ZCPA) to amend the proffers associated with the East Gate I (ZMAP 2004-0020) and East Gate III (ZMAP) 2005-0003) rezoning applications. The properties are both located south of Route 50 with the East Gate I property located south of East Gate View Drive and the Pleasant Valley north of the Church, Ridings at Blue Springs residential neighborhood, and west of Pleasant



Valley Road and the approved but unbuilt Woodburn residential development (ZMAP 2005-0044) and the East Gate III property located west of Poland Road and north of the Valley Vista subdivision (see Vicinity Map). The East Gate I property consists of approximately 37.24 acres zoned R8 and R16 (Residential) and the East Gate III

property consists of approximately 17.52 acres zoned R16 both properties governed under the provisions of the <u>Revised 1993 Zoning Ordinance</u>.

East Gate I and East Gate III were rezoned on February 21, 2006 permitting the development of 399 and 222 residential units respectively. The proffers associated with these two applications called for the construction of a third westbound lane on Route 50 from the County line to Poland Road (Proffer VC1a and VC1b – East Gate I and VC1a – East Gate III). Subsequent to the approval of these applications a VDOT project was funded to improve Route 50 to a six-lane facility from Lee Road in Fairfax County to Poland Road in Loudoun County, which includes the proffered improvements. VDOT reviewed the Route 50 improvement plans prepared by the East Gate I and East Gate III property owner and has determined that the improvements would most likely be removed and replaced when the VDOT project is constructed. The Board of Supervisors at their September 2, 2008 Business Meeting voted to initiate a zoning concept plan for the East Gate I and III properties to amend the proffers associated with the Route 50 improvements to allow for alternative improvements of an equivalent value or a monetary contribution of an equivalent value.

COMPLIANCE WITH THE COMPREHENSIVE PLAN

The subject properties are guided by the land use policies of the Revised General Plan as amended. The properties are located within the Dulles Community of the Suburban Policy Area, and are suitable for Business community uses (Arcola Area/Route 50 Corridor Plan, Planned Land Use Map). The policies of the Revised Countywide Transportation Plan (CTP) also apply.

ANALYSIS

As stated above, the applicant seeks to amend the proffers associated with the construction of the third westbound lane along Route 50 between the County line and Poland Road as approved with the East Gate I (ZMAP 2004-0020) and East Gate III (ZMAP 2005-0003) applications. The proffers call for the applicant to design, bond, and construct the Route 50 improvements prior to the approval of the first record plat or site plan, whichever is first in time and that they will be constructed and open to traffic prior to the issuance of the first occupancy permit for any residential unit on the property (Proffers VC1a, VC1b, and VC2a – East Gate I and VC1a and VC2a – East Gate III). This is consistent with Plan policies calling for road and transportation proffers in the Route 50 Corridor within the initial phases of development (*Revised General Plan, Chapter 6, Arcola Area/Route 50 Corridor Plan Policy 7*). While the approved proffers do allow for a cash equivalent contribution if any of the proffered regional road improvements are constructed or bonded by others prior to the applicant doing so (Proffer VEa and VFa), this proffer does not apply to the Route 50 VDOT improvements as they are still in the design/bid phase of their project.

Staff has reviewed the East Gate I and East Gate III amended proffers included with the submission materials and offers the following comments:

The applicant has provided a strike-through version of the proffers approved with the East Gate I and East Gate III rezonings; however, it appears that Proffer VC2, Phasing for both applications is not representative of the proffers approved with the two rezonings.

Staff recommends revising the submission materials to accurately represent a strike-through version of the proffers approved with the East Gate I and East Gate III rezonings.

East Gate III's Phasing Proffer VC2b states that the road improvements proffered herein will be constructed and open to traffic prior to the issuance of the first occupancy permit for any residential unit on the parcel. This is inconsistent with Phasing Proffer VC2c which states that construction plans and traffic warrant studies for the traffic signals proffered per Regional Road Improvement proffers VC1a and VC1b (Tall Cedars Parkway/Edgewater Street intersection and Tall Cedars Parkway/East Gate Drive intersection) will be submitted prior to the issuance of the 100th zoning permit on the property.

The applicant has amended the proffers tying the two applications together so that the East Gate I proffer amendment cannot be approved without approval of the East Gate III proffer amendment and vice versa (Proffer Statement, page 1). Similarly phasing proffers associated with the two applications include linkages to the two applications. However, the phasing included in the amended proffers state road improvements will be provided prior to the first occupancy permit, while subsequent phasing proffers provide road improvements later in the development of the two properties (see below).

Phasing Proffer VC2a proposed with East Gate I states that the Pleasant Valley Road improvements proffered herein as well as road improvements proffered to be constructed with the East Gate III application must be designed, approved, bonded and open to traffic prior to the issuance of the first occupancy permit for any residential units on the East Gate I property. Additionally, the proposed Phasing Proffers VC2a and VC2b associated with the East Gate III application state that prior to the issuance of the first occupancy permit for any residential units on the East Gate III property the road improvements proffered with the East Gate III application as well as those proffered with the East Gate I application will be constructed and open to traffic. Staff notes that several road improvements proffered with the East Gate I application are not scheduled to occur at the beginning of the project¹. Additionally, as stated above traffic warrant studies for traffic signals included in the Regional Road Improvement Proffers (VC1a and VC1b) with the East Gate III application are not required prior to the issuance of the 100th zoning permit on the property.

¹East Gate I Proffer VC2c calls for Tall Cedars Parkway from East Gate Drive to Edgewater Street construction prior to the 300th zoning permit or to coincide with the opening of Tall Cedars Parkway from East Gate Drive north to Route 50, whichever occurs first and Proffer VC2d requires the Route 50/Tall Cedars Parkway traffic signal warrant study prior to the issuance of the 100th zoning permit

Staff recommends revising the phasing proffers associated with the East Gate I and East Gate III applications. The East Gate I phasing proffer VC2a should be revised removing the reference to road improvements proffered with the East Gate III application. Similarly the East Gate III phasing proffers VC2a and VC2b should be removed from the amended proffers.

East Gate I's Phasing Proffer VC2d discusses the timing for the traffic signal proffered for the Route 50/Tall Cedars Parkway intersection (VC1d). The proffer also provides for a cash contribution in lieu of installing the traffic signal if VDOT has not approved the traffic signal warrant study by the issuance of the 375th zoning permit for the property. The value of said contribution shall be established by mutual agreement. No information has been provided regarding who this mutual agreement will be between nor has information been provided regarding how this contribution will be determined. The previously approved proffers provided that the value of the traffic signal would be established in accordance with paragraph VE of the Proffer Statement. Proffer VEc details how the in-lieu-of contribution construction costs shall be determined stating that "construction costs shall be deemed to include all engineering, surveying, bonding, permit fees, utility relocation, and other hard costs of construction based upon County bonding estimates for construction per the FSM". Staff is unsure why the applicant is proposing the change in calculating the costs of construction for the proffered traffic signal (VC1d).

Staff does not support the proposed change to the calculation of costs in lieu of construction for the Route 50/Tall Cedars Parkway intersection.

The East Gate I Cash Equivalent Contribution Proffer VEc states that contributions in lieu of actual construction costs shall occur prior to the issuance of the first residential occupancy permit, as set forth above. Staff notes that the only road improvement proffered to occur prior to the issuance of the first occupancy permit is the Pleasant Valley Road widening (Proffer VC2a) and recommends that the proffers remain as previously approved stating "contribution in lieu of actual construction shall occur at the time the Applicants would otherwise have been required by these proffers to bond or construct such improvements".

Staff recommends retaining the wording as previously approved that in-lieu-of construction costs shall occur at the time the owner would otherwise have been required by the proffers to bond or construct such improvements.

As part of the proffer amendments, the applicant has included the provision for a cash equivalent contribution for the proffered Route 50 regional road improvements. Proffer VEb proposed with the East Gate I application and Proffer VFb proposed with the East Gate III application both state that the applicant agrees to contribute to the County, or its designee an amount equal to the mutually agreed cost of constructing the Route 50

transportation improvements with payment to be made prior to the first occupancy permit for either the East Gate I or East Gate III properties. As stated above, Proffer VEc associated with the East Gate I proffer amendment and VFc associated with the East Gate III proffer amendment provide specific details pertaining to the determination of construction costs.

Staff recommends revising the proffers associated with both the East Gate I and East Gate III applications to state that the Route 50 transportation improvements cash equivalent contribution shall be determined in accordance with Proffer VEb as proposed with the East Gate I application and Proffer VFc as proposed with the East Gate III application.

East Gate III Proffer VFa discusses cash equivalent contributions in lieu of actual construction for transportation improvements described in proffers VC1a, VC1b, and VC1c. Staff notes that Proffer VC1c pertains to the reservation of Defender Drive and does not include construction.

Staff recommends revising East Gate III Proffer VFa removing the reference to Proffer VC1c.

Staff also has the following editorial comments:

The East Gate I amended proffers state on the first page that the previously referred to "Applicant" will now be referred to as "Owner". The proffers however, have not been updated changing all references from "Applicant" to "Owner".

East Gate I Proffer VC1 "and" has been incorrectly removed from the first sentence. The sentence should read "In accordance with the phasing outlined below, the Owner shall design, bond, <u>and</u> construct the regional road improvements identified herein".

East Gate I Proffer VEb in the first sentence change "this" to "these".

RECOMMENDATIONS

Staff has no issue with the requested Zoning Concept Plan Amendment to amend the East Gate I and East Gate III proffers allowing the applicant to provide a cash equivalent contribution in lieu of the previously approved Route 50 transportation improvements. Staff recommends approval of the application provided the applicant revises the proffers as outlined above.

Staff is available to meet with the applicant to discuss any comments or questions.

cc: Julie Pastor, AICP, Director, Planning
Cynthia Keegan, AICP, Program Manager, Community Planning via e-mail

COUNTY OF LOUDOUN

DEPARTMENT OF BUILDING AND DEVELOPMENT

ZONING ADMINISTRATION REFERRAL

DATE:

March 4, 2009

TO:

Ginny Rowen, Project Manager, Department of Planning

FROM:

Rory L. Toth, Planner, Zoning Administration

CASE NUMBER & NAME: ZCPA-2008-0010 & ZCPA-2008-0011 East Gate One and East

Gate Three Proffer Amendments 2nd Submission

TAX MAP/PARCEL NUMBER (MCPI): 107//////38/ 097-18-7545 for ZCPA-2008-0010

102///5////B/ 128-49-6066 for ZCPA-2008-0011

Staff has reviewed the second submission of the referenced zoning concept plan amendment (ZCPA) applications to include the draft East Gate One Proffer Statement dated October 31, 2005, revised through February 13, 2009 and the draft East Gate Three Proffer Statement dated October 31, 2005, revised through February 13, 2009. The properties are currently zoned R-8 and R-16 under the Revised 1993 Loudoun County Zoning Ordinance. The Applicant is requesting to revise the proffer statements for ZMAP-2004-0020 and ZMAP-2005-0003. The aforementioned ZMAP applications contained proffers which require the construction of Route 50 improvements between the County line and Poland Road and a third westbound lane. Subsequent to the approval of these applications, a VDOT project to improve Route 50 to a six lane facility from Lee Road in Fairfax County to Poland Road in Loudoun County, which includes the above proffered improvements, was funded. VDOT reviewed the improvements approved with the ZMAP applications and determined that said improvements would be removed and replaced when the VDOT project is constructed. Therefore, the Board of Supervisors (BOS) initiated an intent to amend dated September 2, 2008 to amend the proffer statements for East Gate One and East Gate Three. With the ZCPAs referenced above, the Applicant is proposing to provide either alternative improvements of an equivalent value or a monetary contribution of an equivalent value as a replacement to the proffered improvements. Staff has reviewed the aforementioned applications and has the following comments.

A. PROFFERS FOR EAST GATE ONE

- 1. Proffer Statement Title Page One. Add the revision date of the proffer statement to the heading on page one.
- 2. Proffer Statement Opening Paragraph. Staff notes that this proffer is drafted in a manner that the East Gate One proffers will not be approved unless the East Gate III proffers are approved. Staff questions the reasoning the proffer is drafted in this manner.

Attachment 13

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- 3. Proffer V.C.2.d. Regional Road Improvements. Phasing. Staff recommends that the proffer specify what the actual amount will be with regard to the contribution for the traffic signal. Staff defers additional comment to the Office of Transportation Services (OTS).
- 4. Proffer V.E.b and c. Cash Equivalent Contribution. Staff recommends that the proffer clarify the dollar amount with regard to the cash contributions. Staff defers additional comment to the OTS. In addition, the Applicant has proffered substantial conformance with Sheets 1, 5, 6, 7, 9, and 10 of the East Gate One plan ZMAP-2004-0020 dated November 22, 2004, revised through January 27, 2006. It is noted that Sheets 4, 7, 9, and 11 on the Rezoning Plat contain notes, signals, turn lanes and interchange improvements on Route 50 and other roads. Also, Staff reiterates that the proffer language be revised so that it is stated more clearly that the proffered Route 50 improvements shown on the Rezoning Plat that will constructed by VDOT are not to be constructed by the Applicant. In addition, per Proffer V.E.c, the proffered contribution amount will be based on the County's bonding estimate for the project. Since the construction is being done as a VDOT project, Staff is concerned with the proffer language and questions whether there will be a County bond estimate for the project, as typically VDOT projects are not bonded with the County.
- 5. Staff notes that some of the East Gate One proffers have been partially or completely fulfilled. Staff recommends that the Applicant provide a proffer status to the County.

B. PROFFERS FOR EAST GATE THREE

- 1. Proffer Statement Title Page One. Add the revision date of the proffer statement to the heading on page one.
- 2. Proffer Statement Opening Paragraph. Staff notes that this proffer is drafted in a manner that the East Gate One proffers will not be approved unless the East Gate I proffers are approved. Staff questions the reasoning the proffer is drafted in this manner.
- 3. Proffer Statement Opening Paragraph and Proffer I. Rezoning Plat. The Applicant has proffered substantial conformance with Sheets 1, 5, 6, 7,8, 9, and 10 of the East Gate Three plan ZMAP-2005-0003 dated November 22, 2004, revised through February 13, 2006. It is noted that Sheets 4, 7, 8, 9, and 11 on the Rezoning Plat contain notes, signals, turn lanes and interchange improvements on Route 50 and other roads that need to be revised to reflect the amended proffer statement for East Gate Three. Staff reiterates that the proffer language be revised so that it is stated more clearly that the proffered Route 50 improvements shown on the Rezoning Plat that will constructed by VDOT are not to be constructed by the Applicant.
- 4. Proffer V.F.a, b, and c. Cash Equivalent Contribution. Staff recommends that the proffer specify the dollar amount with regard to the cash contributions. Staff defers additional comment to the OTS. Also, Staff recommends that the proffer language be

revised so that it is stated more clearly that the proffered Route 50 improvements shown on the Rezoning Plat that will constructed by VDOT are not to be constructed by the Applicant. In addition, Proffer V.F.b & c Staff notes that the Owner is agreeing to contribute an amount equal to the cost of construction for the 3rd westbound lane on Route 50. Per proffer V.F.c, the amount will be based on the County's bond estimate for the project. Since the proposed construction is being done as a VDOT project, Staff is concerned with the proffer language and questions whether there will be a County bond estimate for the project, as typically VDOT projects are not bonded with the County.

cc: Mark Stultz, Deputy Zoning Administrator Susan Glass, Proffer Manager Dan Csizmar, Capital Facilities Planner

COUNTY OF LOUDOUN

DEPARTMENT OF BUILDING AND DEVELOPMENT

ZONING ADMINISTRATION REFERRAL

DATE:

January 15, 2009

TO:

Ginny Rowen, Project Manager, Department of Planning

FROM:

Rory L. Toth, Planner, Zoning Administration (

CASE NUMBER & NAME: ZCPA-2008-0010 & ZCPA-2008-0011 East Gate One and East Gate

Three Proffer Amendments 1st Submission

TAX MAP/PARCEL NUMBER (MCPI): 107//////38/ 097-18-7545 for ZCPA-2008-0010

102///5////B/ 128-49-6066 for ZCPA-2008-0011

Staff has reviewed the first submission of the referenced zoning concept plan amendment (ZCPA) applications to include the draft East Gate One Proffer Statement dated October 31, 2005, revised through 2008 and the draft East Gate Three Proffer Statement dated October 31, 2005, revised through 2008; Rezoning Plats for East Gate One dated November 22, 2004, revised through January 27, 2006 and East Gate Three dated November 22, 2004, revised through February 13, 2006. The properties are currently zoned R-8 and R-16 under the Revised 1993 Loudoun County Zoning Ordinance. The Applicant is requesting to revise the proffer statements for ZMAP-2004-0020 and ZMAP-2005-0003. The aforementioned ZMAP applications contained proffers which require the construction of Route 50 improvements between the County line and Poland Road and a third westbound lane. Subsequent to the approval of these applications, a VDOT project to improve Route 50 to a six lane facility from Lee Road in Fairfax County to Poland Road in Loudoun County, which includes the above proffered improvements, was funded. VDOT reviewed the improvements approved with the ZMAP applications and determined that said improvements would be removed and replaced when the VDOT project is constructed. Therefore, the Board of Supervisors (BOS) initiated an intent to amend dated September 2, 2008 to amend the proffer statements for East Gate One and East Gate Three. With the ZCPAs referenced above, the Applicant is proposing to provide either alternative improvements of an equivalent value or a monetary contribution of an equivalent value as a replacement to the proffered improvements. Staff has reviewed the aforementioned applications and has the following comments.

A. PROFFERS FOR EAST GATE ONE

1. Proffer Statement Title Page One. On Page 1 at the heading of the proffer statement, include the ZCPA application number "ZCPA-2008-0010" and amend the revision date of the proffers so it does not read "As Further Revised \, 2008."

- 2. Proffer Statement Opening Paragraph. On Page 1, insert the ZCPA application numbers for the East Gate One and East Gate Three applications (ZCPA-2008-0010 and ZCPA-2008-0011) in the last sentence of the opening paragraph. Remove Footnote 1 that states "The use of "A" and "B" is as a placeholder only."
- 3. Proffer V.C.2.d. Regional Road Improvements. Phasing. Staff recommends clarification of what is meant by the phrase "mutual agreement" in the last sentence of this proffer with regard to the contribution for the traffic signal, as this language is vague. Staff defers additional comment to the Office of Transportation Services (OTS).
- 4. Proffer V.E.b. Cash Equivalent Contribution. Staff recommends clarification of what is meant by the phrase "mutual agreed cost" in this proffer as this is vague. In addition, add the correct ZCPA application numbers for East Gate One and East Gate Three to the proffer language. Staff defers additional comment to the OTS. In addition, the Applicant has proffered substantial conformance with Sheets 1, 5, 6, 7, 9, and 10 of the East Gate One plan ZMAP-2004-0020 dated November 22, 2004, revised through January 27, 2006. It is noted that Sheets 4, 7, 9, and 11 on the Rezoning Plat contain notes, signals, turn lanes and interchange improvements on Route 50 and other roads. Also, Staff recommends that the proffer language be revised so that it is stated more clearly that the proffered Route 50 improvements shown on the Rezoning Plat that will constructed by VDOT are not to be constructed by the Applicant.
- 5. Proffer V.E.c. Cash Equivalent Contribution. As per Dan Csizmar, Capital Facilities Planner, Staff recommends that the cash in lieu of construction contribution for the 3rd westbound lane of Route 50 go to the County for regional road and transit improvements in the vicinity of the property.

B. PROFFERS FOR EAST GATE THREE

- 1. Proffer Statement Title Page One. On Page 1 at the heading of the proffer statement, include the ZCPA application number "ZCPA-2008-0011" and amend the revision date of the proffers so it does not read "As Further Revised \, 2008."
- 2. Proffer Statement Opening Paragraph. On Page 1, insert the ZCPA application numbers for the East Gate One and East Gate Three applications (ZCPA-2008-0010 and ZCPA-2008-0011) in the last sentence of the opening paragraph. Remove Footnote 1 that states "The use of "A" and "B" is as a placeholder only."
- 3. Proffer Statement Opening Paragraph and Proffer I. Rezoning Plat. The Applicant has proffered substantial conformance with Sheets 1, 5, 6, 7,8, 9, and 10 of the East Gate Three plan ZMAP-2005-0003 dated November 22, 2004, revised through February 13, 2006. It is noted that Sheets 4, 7, 8, 9, and 11 on the Rezoning Plat contain notes, signals, turn lanes and interchange improvements on Route 50 and other roads that need to be revised to reflect the amended proffer statement for East Gate Three.

- 4. Proffer V.C.2.a and b. Phasing. Insert the application number "ZCPA-2008-0010" when referencing the East Gate One application.
- 5. Proffer V.F.b. Cash Equivalent Contribution. Staff recommends clarification of what is meant by the phrase "mutually agreed cost" in this proffer as this is vague. In addition, add the correct ZCPA application numbers for East Gate One and East Gate Three to the proffer language. Staff defers additional comment to the OTS. Also, Staff recommends that the proffer language be revised so that it is stated more clearly that the proffered Route 50 improvements shown on the Rezoning Plat that will constructed by VDOT are not to be constructed by the Applicant.
- 6. Proffer V.E.c. Cash Equivalent Contribution. As per Dan Csizmar, Capital Facilities Planner, Staff recommends that the cash in lieu of construction contribution for the improvements to Route 50 go to the County for regional road and transit improvements in the vicinity of the property.
- 7. Proffer IX. Linkage of Residential to Non-Residential Development. Insert the application number "ZCPA-2008-0010" when referencing the East Gate One application.

cc: Mark Stultz, Deputy Zoning Administrator Susan Glass, Proffer Manager Dan Csizmar, Capital Facilities Planner

County of Loudoun

Office of Transportation Services

MEMORANDUM

DATE:

February 24, 2009

TO:

Ginny Rowen, Project Manager, Department of Planning

FROM:

Art Smith, Senior Coordinator

SUBJECT:

ZCPA 2008-0010 East Gate One Proffer Amendment

ZCPA 2208-0011 East Gate Three Proffer Amendment

2nd Referral

This referral will serve to update the status of Issue Number 2 in our initial referral on these applications and to discuss a proffer revision for Pleasant Valley Road intersection improvement proffer changes. Other issues have been addressed.

Issue 2:

The latest bond cost estimate for the cost of constructing the East Gate third lane improvements, dated September 28, 2006 was \$1,525,000. An updated current cost estimate would most likely be higher. Such an estimate could be prepared by the project engineer for CPAP 2006-0122 and submitted to the County's Department of Building and Development (B&D). Upon approval by B&D this amount should be included under the cost equivalency portion of the proffers. This contribution should be paid in full, with appropriate escalations, prior to the approval of the first zoning permit or site plan, whichever is first in time, on the subject properties.

Response:

The Owner suggests that the proffers not specify an amount. There is currently a mechanism in place for the calculation of the cash equivalent contribution that other comments have suggested be employed. The timing of this payment, as well as the timing of other improvements to which the Owner is committed, is set out in the revised proffer statement that has been modified as recommended by the staff.

Status:

The applicant's response is likely referring to the bond estimate cost process managed by the County's Department of Building and Development (B&D). Please confirm if this is the case. If so, B&D recently requested an updated cost estimate from the applicant's engineer but has not received this material yet. General language could be used

Attachment 1 C

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saying the contribution amount would be the latest estimated cost of construction as approved by the Department of Building and Development. It would be useful to know this amount by the time these applications reach public hearing. This cost equivalency should be all-inclusive of all costs which would have been incurred by the applicant in the construction of the third lane including, for example, utility relocation.

Issue:

Deletion of Proffer C1b of ZCPA 2008-0010. The deleted language is:

"Construct a second westbound Route 50 to southbound Pleasant Valley Road left turn lane, dedicated right turn lane and right turn acceleration lane; signal adjustments"

VDOT should confirm whether these intersection improvements would be demolished when the VDOT Six-lane Expansion Project is constructed. If they would, the intersection improvements should be treated the same as the Route 50 third westbound lanes and covered with a cash equivalency provision. If the intersection improvements would not be demolished by the VDOT project, they should be constructed by the applicant. Further coordination with VDOT is needed on this issue, including timing of construction.

CONCLUSION

OTS supports approval of these applications subject to appropriate resolution of the issues above with appropriate proffer language changes.

cc: Charles Yudd, Deputy County Administrator
Terrie Laycock, Director, OTS
Andy Beacher, Assistant Director, OTS
Dale Castellow, Senior Transportation Planner
Lou Mosurak, Senior Transportation Planner
Ken Harwood, Project Manager

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County of Loudoun

Office of Transportation Services

MEMORANDUM

DATE:

January 23, 2009

TO:

Ginny Rowen, Project Manager, Department of Planning

FROM:

Art Smith, Senior Coordinator

SUBJECT:

ZCPA 2008-0010 East Gate One Proffer Amendment

ZCPA 2008-0011 East Gate Three Proffer Amendment

First Referral

Background

These applications are the result of a Board of Supervisors Member Initiative from Supervisor Stevens Miller, Dulles District. On September 2, 2008, the Board approved a Resolution of Intent to Initiate a Zoning Concept Plan Amendment (ZCPA) for East Gate One (ZMAP 2004-0020) and East Gate Three (ZMAP 2005-0003). The ZMAP applications were approved in February 2006.

Proffer C.1.a. of East Gate One is for the construction of a third westbound lane on Route 50 from the Fairfax County line to the new intersection of Tall Cedars Parkway with Route 50, a distance of approximately 3,500 LF. Proffer C.1.a of East Gate Three is for the construction of a third westbound lane on Route 50 between Tall Cedars Parkway and Poland Road a distance of approximately 3,700 LF.

Subsequent to the approval of those applications, a VDOT project has been funded to improve Route 50 to a six lane facility from Lee Road in Fairfax County to Poland Road in Loudoun County. If the applicant were to fulfill their proffer by constructing the proffered improvements, they would have to be removed and replaced when the VDOT project is constructed. Alternatively, in lieu of construction, the proffer amendment process allows for either a) an equivalent value of the proffered road improvements to be provided by the property owner, or b) alternative improvements to be constructed by the property owner, as agreed to by the County.

In meetings with the District Supervisor and the original applicant for the rezoning it has been made clear that the situation represents an opportunity to gain alternative improvements elsewhere in the area or a cash equivalent value of the earlier proposed 3rd lane in addition to the benefit of the VDOT project. The VDOT project will fulfill the intent of the original proffer and provides an additional eastbound lane as well.

In its consideration of these applications, OTS reviewed traffic analyses submitted with the approved East Gate One and East Gate Three applications. There was no new traffic analysis submitted for these ZCPA applications.

Issues

- 1. The construction plans for the East Gate westbound additional third lane on Route 50 are now in 4th submission review (CPAP 2006-0122). VDOT's most recent comment letter on the construction plans, dated January 5, 2009 is Attachment 1 to this referral. This VDOT letter confirms "The applicant should understand that whatever is proposed on this plan will probably be demolished by the VDOT project. However, for the purpose of the approval of this plan per County requirement the plan should be developed as an independent stand-alone document as stated above". Please note review of CPAP 2006-0122 is continuing at this time. OTS understands most of the unresolved issues are related to drainage.
- 2. The latest bond cost estimate for the cost of constructing the East Gate third lane improvements, dated September 28, 2006 was \$1,525,000. An updated current cost estimate would most likely be higher. Such an estimate could be prepared by the project engineer for CPAP 2006-0122 and submitted to the County's Department of Building and Development (B&D). Upon approval by B&D this amount should be included under the cost equivalency portion of the proffers. This contribution should be paid in full, with appropriate escalations, prior to the approval of the first zoning permit or site plan, whichever is first in time, on the subject properties.
- 3. With respect to alternate improvements, please note that the small remaining segment of Tall Cedars Parkway east of Planting Field Drive has approved construction plans and is bonded for construction. One use of the equivalency funds could be a contribution towards the cost of the future Loudoun County Parkway/Route 50 interchange.
- 4. Currently the four lane section of Route 50 between the County line and Poland Road operates at LOS F at peak hours. This condition will persist until the completion of construction of the VDOT project, now estimated to be 2013.

Conclusion

OTS supports approval of the requested ZCPA's to allow the amendment of the East Gate One and Three proffers subject to appropriate proffer language changes specified in the Comprehensive Planning and Zoning Administration referrals.

cc: Charles Yudd, County Administration
Terrie Laycock, OTS
Andy Beacher, OTS
Dale Castellow, OTS
Ken Harwood, B&D



COMMONWEALTH of VIRGINIA

DAVID S. EKERN, P.E. COMMISSIONER

DEPARTMENT OF TRANSPORTATION

14685 Avion Parkway Chantilly, VA 20151 (703) 383-VDOT (8368)

January 14, 2009

Ms. Ginny Rowen
County of Loudoun
Department of Planning
1 Harrison Street, S.E.
P.O. Box 7000
Leesburg, Virginia 20177-7000



Re:

East Gate One Proffer Amendment ZCPA 2008-0010 East Gate Three Proffer Amendment ZCPA 2008-0011

Dear Ms. Rowen:

We have reviewed the above noted application as requested in your December 18, 2008 transmittal, and we have no objection to the proffer amendment to provide for a cash contribution in lieu of construction for the Route 50 improvements as referenced in the revised proffer statement.

If you have any questions, please call me at (703) 383-2041.

Sincerely,

Thomas B. Walker

Senior Transportation Engineer

MEMORANDUM



TO: Ginny Rowen, Department of Planning (#62)

FROM: Larr Kelly, Zoning Division, Department of Building and Development (#60)

DATE: March 23, 2009

RE: ZCPA 2008-0010 East Gate One and ZCPA 2008-0011 East Gate Three

As requested, I have reviewed the revised proffers dated March 16, 2009, for the above referenced Zoning Concept Plan Amendment applications. Pursuant to this review, I offer the following comments:

A. In regard to ZCPA 2008-0010: East Gate One:

- 1. In regard to the preamble, in the fifth line thereof, I suggest that the phrase "ZMAP 2004-0020 rezoning the Property" be changed to "ZMAP 2004-0020, which rezoned the Property".
- 2. In regard to proffer I., in the second line thereof, I suggest that the reference to "Proffer V.F.b." be changed to "Proffer V.E.b.".
- 3. In further regard to proffer I., in the fifth and sixth lines thereof, I suggest that the phrase "incorporated herein by reference as Exhibit A" be changed to "incorporated herein by reference as either 'Exhibit A' or 'Rezoning Plat'".
- 4. In regard to proffer III.A., in the fifth line thereof, I suggest that the phrase "planning area exists at date of the original proffers applicable to the Property" be changed to "planning area, as it existed on the date of approval of ZMAP 2004-0020,".
- 5. In regard to proffer III.B.in the third paragraph thereof, the applicant has twice referenced "ZMAP 2004-20". I suggest that both of these references be changed to "ZMAP 2004-0020".
- 6. In further regard to proffer III.B., in the last two lines thereof, I note that one of the proffered commitments from ZMAP 2004-0020 has a five year limitation on it. I urge staff to review this provision to determine whether the County has made use of this provision, or is otherwise monitoring this provision, as the five year limit is getting close to expiring.

Attachment I E

A-19

- 7. In regard to proffer V.E.b., in the fourth and fifth lines thereof, I suggest that the phrase "certain road improvements in ZMAP 2004-0020 heretofore proffered" be changed to "certain road improvements heretofore proffered in ZMAP 2004-0020."
- 8. These proffers will need to be signed by all landowners, and be notarized, prior to the public hearing on this application before the Board of Supervisors.

B. In regard to ZCPA 2008-0011: East Gate Three:

- 1. In regard to the preamble, in the sixth line thereof, I suggest that the phrase "ZMAP 2005-0003 rezoning the Property" be changed to "ZMAP 2003-0005, which rezoned the Property".
- 2. In regard to proffer I., in the second line thereof, I suggest that the reference to "Proffer V.E.b." be changed to "Proffer V.F.b.".
- 3. In regard to proffer I., in the sixth line thereof, I suggest that the phrase "incorporated herein by reference as Exhibit A" be changed to "incorporated herein by reference as either 'Exhibit A' or as 'Rezoning Plat'".
- 4. In regard to proffer III.A. in the fifth line thereof, I suggest that the phrase "planning area exists at date of the original proffers applicable to the Property" be changed to "planning area, as it existed on the date of approval of ZMAP 2005-0003,".
- 5. In regard to proffer III.B., in the last two lines thereof, I note that one of the proffered commitments from ZMAP 2005-0003 has a five year limitation on it. I urge staff to review this provision to determine whether the County has made use of this provision, or is otherwise monitoring this provision, as the five year limit is getting close to expiring.
- 6. These proffers will need to be signed by all landowners, and be notarized, prior to the public hearing on this application before the Board of Supervisors.



MEMORANDUM

TO: Ginny Rowen, Department of Planning (#62)

FROM: Larr Kelly, Zoning Division, Department of Building and Development (#60)

DATE: March 12, 2009

RE: ZCPA 2008-0010 East Gate One and ZCPA 2008-0011 East Gate Three

As requested, I have reviewed the proffers, as revised, but with no clear revision date, for the above referenced Zoning Concept Plan Amendment applications. Pursuant to this review, I offer the following comments:

- A. In regard to ZCPA 2008-0010: East Gate One:
 - 1. In regard to the header of the proffer statement, I suggest that the phrase "Amended Proffer Statement" be changed to "Zoning Concept Plan Amendment Proffer Statement".
 - 2. In further regard to the header, I suggest that the proffers simply be given a single, current, date.
 - 3. In regard to the preamble, in the third line thereof, I suggest that the phrase "(hereinafter referred to the 'Owner')" be changed to "(hereinafter referred to as 'Owner')".
 - 4. In further regard to the preamble, in the fourth through seventh lines thereof, I note that the applicant has proposed to delete existing language that establishes the term "the Property" as a term of art. As this term is used throughout the proffers, I suggest that the preamble be changed so that it continues to identify the subject property as "the Property" so that the proffers remain consistent throughout.
 - 5. In further regard to the preamble, in the fourth through seventh lines thereof, I note that the applicant has deleted references to the current zoning, as approved with ZMAP 2004-0020. Although the applicant refers to ZMAP 2004-0020, I suggest that this reference also clearly indicate that the Property was rezoned to the R-8 and R-16 zoning districts by approval of ZMAP 2004-0020.
 - 6. In further regard to the preamble, in the last five lines, I find the language to be confusing. I suggest that these be rewritten to state "... shall become effective only upon final approval of this Zoning Concept Plan Amendment application,

ZCPA 2008-0010 (East Gate One) and of ZCPA 2008-0011 (East Gate Three). In the event that the Board declines to approve both ZCPA 2008-0010 and ZCPA 2008-0011, then the previously approved proffers for the Property shall continue to govern the development of the Property."

- 7. In regard to proffer I, concerning the "Rezoning Plat", in the second line thereof, I suggest that the phrase "described herein," be changed to "described below in Proffer V.E.b.,"
- 8. In further regard to proffer I., in the sixth line thereof, I suggest that a parenthetical which reads "('Rezoning Plat')" be inserted following the phrase "by reference as Exhibit A", as the proffers continually refer to the "Rezoning Plat", without the term being clearly identified.
- 9. In further regard to proffer I., in the tenth line thereof, I suggest that a comma be placed after the word "provided".
- 10. In further regard to proffer I., in the last sentence thereof, I suggest that the phrase "Construction of" be inserted at the beginning of the sentence, and I suggest that the phrase ", as described in Proffer V.E.b.," be inserted following the phrase "made by VDOT".
- 11. In regard to proffer III.A., in the fifth line thereof, there is a reference to the boundary of said planning area as it exists "at date of these proffers". I do not know if there is any difference in the planning boundaries as they existed on October 31, 2005 and now, but it is not clear whether this reference is intended to refer to the date of the initial rezoning or the date of approval of this ZCPA. I suggest that this be clarified.
- 12. In regard to proffer III.B., in the fourth line of the third paragraph thereof, I suggest that the phrase "the rezoning" be changed to "ZMAP 2004-0020".
- 13. In further regard to proffer III.B., in the last two lines thereof, I note that the applicant continues to use the phrase "this rezoning". I suggest that it be clarified whether this is intended to refer to ZMAP 2004-0020 or to ZCPA 2008-0010.
- 14. In regard to proffer V.E.a., in the fourth line thereof, I suggest that the phrase "agrees to" be changed to "shall". I also suggest that commas be placed around the phrase "or its designee".
- 15. In regard to proffer V.E.b., in the second line thereof, I suggest that the phrase "Route 50 in such" be changed to "Route 50, as identified below, in such".

- 16. In further regard to proffer V.E.b., in the fourth line thereof, I suggest that the phrase "in ZMAP 2004-0020" be inserted following the phrase "heretofore proffered".
- 17. In further regard to proffer V.E.b., in the sixth and seventh lines thereof, I suggest that commas be placed around the phrase "or its designee".
- 18. In further regard to proffer V.E.b., in the tenth line thereof, I suggest that the phrase "the first occupancy permit" be changed to "the issuance of the first zoning permit".
- 19. In regard to proffer IX., in the fourth and fifth lines thereof, I suggest that commas be placed around the phrase "in combination with such permits issued on ZCPA 2008-0011".
- 20. In regard to proffer XI., in the eighth line thereof, I suggest that the phrase "inlieu" be changed to "cash equivalent" in order to match what is stated in the header for proffer V.E.b..
- 21. These proffers will need to be signed by all landowners, and be notarized, prior to the public hearing on this application before the Board of Supervisors.

B. In regard to ZCPA 2008-0011: East Gate Three:

- 1. In regard to the header of the proffer statement, I suggest that the phrase "Amended Proffer Statement" be changed to "Zoning Concept Plan Amendment Proffer Statement".
- 2. In further regard to the header, I suggest that the proffers simply be given a single, current, date.
- 3. In regard to the preamble, in the third line thereof, I suggest that the phrase "(hereinafter referred to as the 'Owner')" be changed to "(hereinafter referred to as 'Owner')".
- 4. In further regard to the preamble, in the fifth through seventh lines thereof, I note that the applicant has proposed to delete existing language that establishes the term "the Property" as a term of art. As this term is used throughout the proffers, I suggest that the preamble be changed so that it continues to identify the subject property as "the Property" so that the proffers remain consistent throughout.
- 5. In further regard to the preamble, in the fifth through seventh lines thereof, I note that the applicant has deleted references to the current zoning, as approved with

ZMAP 2005-0003. Although the applicant refers to ZMAP 2005-0003, I suggest that this reference also clearly indicate that the Property was rezoned to the R-16 zoning district by approval of ZMAP 2005-0003.

- 6. In further regard to the preamble, in the last four lines, I find the language to be confusing. I suggest that these be rewritten to state "... shall become effective only upon final approval of this Zoning Concept Plan Amendment application, ZCPA 2008-0011 (East Gate Three) and of ZCPA 2008-0010 (East Gate One). In the event that the Board declines to approve both ZCPA 2008-0011 and ZCPA 2008-0010, then the previously approved proffers for the Property shall continue to govern the development of the Property."
- 7. In regard to proffer I, concerning the "Rezoning Plat", in the second line thereof, I suggest that the phrase "described herein," be changed to "described below in Proffer V.F.b.,"
- 8. In further regard to proffer I., in the sixth line thereof, I suggest that a parenthetical which reads "('Rezoning Plat')" be inserted following the phrase "by reference as Exhibit A", as the proffers continually refer to the "Rezoning Plat", without the term being clearly identified.
- 9. In further regard to proffer I., in the last sentence thereof, I suggest that the phrase "Construction of" be inserted at the beginning of the sentence, and I suggest that the phrase ", as described in Proffer V.F.b.," be inserted following the phrase "made by VDOT".
- 10. In regard to proffer III.A., in the fifth line thereof, there is a reference to the boundary of said planning area as it exists "at date of these proffers". I do not know if there is any difference in the planning boundaries as they existed on October 31, 2005 and now, but it is not clear whether this reference is intended to refer to the date of the initial rezoning or the date of approval of this ZCPA. I suggest that this be clarified.
- 11. In regard to proffer III.B., in the fourth line of the third paragraph thereof, I suggest that the phrase "the rezoning" be changed to "ZMAP 2005-0003".
- 12. In further regard to proffer III.B., in the last two lines thereof, I note that the applicant continues to use the phrase "this rezoning". I suggest that it be clarified whether this is intended to refer to ZMAP 2005-0003 or to ZCPA 2008-0011.
- 13. In regard to proffer V.C.2.b., which states that the Deed of Reservation for Defender Drive shall be recorded in conformance with Proffer V.C.1.c., I find the proffer to be redundant with proffer V.C.1.c. and can be deleted.

- 14. In regard to proffer V.F.a., in the fourth line thereof, I suggest that commas be placed around the phrase "or its designee".
- 15. In regard to proffer V.F.b., in the second line thereof, I suggest that the phrase "Route 50 in such" be changed to "Route 50, as identified below, in such".
- 16. In further regard to proffer V.F.b., in the fourth line thereof, I suggest that the phrase "in ZMAP 2005-0003" be inserted following the phrase "heretofore proffered".
- 17. In further regard to proffer V.F.b., in the sixth and seventh lines thereof, I suggest that commas be placed around the phrase "or its designee".
- 18. In further regard to proffer V.F.b., in the tenth line thereof, I suggest that the phrase "the first occupancy permit" be changed to "the issuance of the first zoning permit".
- 19. In regard to proffer V.F.c., in the first sentence thereof, I suggest that the reference to "subsection (b), above,", be changed to "Proffer V.F.b., above,
- 20. In regard to proffer IX., in the fourth and fifth lines thereof, I suggest that commas be placed around the phrase "in combination with such permits issued on ZCPA 2008-0010".
- 21. In regard to proffer XI., in the eighth line thereof, I suggest that the phrase "inlieu" be changed to "cash equivalent" in order to match what is stated in the header for proffer V.F.b..
- 22. These proffers will need to be signed by all landowners, and be notarized, prior to the public hearing on this application before the Board of Supervisors.

1751

COUNTY OF LOUDOUN

DEPARTMENT OF BUILDING AND DEVELOPMENT

MEMORANDUM

Date:

March 4, 2009

To:

Ms. Ginny Rowan, Planning

Ms. Terrie Laycock, Office of Transportation Services

From:

Mr. Kenneth Harwood, Project Engineer, Engineering Division

Subject:

Bond estimate amounts

Re:

Rte 50 westbound lane improvements CPAP-2006-0122 and Pleasant Valley

Road intersection with Rte 50 CPAP-2006-0157 (Phase II)

Related to our discussions and e-mails this morning I have reviewed the proposed bond estimates and the plans. We generally agree with the numbers provided with the current Bond Estimates which were submitted by the applicant on March 3 and March 4, 2009. However there are several items that are not in the estimates but included in the plans and the quantities for some items appear to be low. Missing items include relocating utility poles, traffic control during construction, stop and street signs, an endwall for the 68"x 43" pipe, guardrails, and the concrete ditch. In addition, the rip-rap, excavation and borrow items appear to be low. In order to cover these items and unforeseen items we recommend including contingency amounts in the bond estimates.

Based on the current County unit cost list, the performance bond for the public improvements in these construction plans are as follows:

Rte 50 westbound lane	\$1,267,000.00
20% contingency	\$ 254,000.00
Total =	\$1,521,000.00
Rte 50 and Pleasant Valley	\$377,016.30
20% contingency	\$75,403.26
Total =	\$453,000.00

Please let me know if you have any questions regarding this issue.

Attachment 1 F

A-26

LOUDOUN COUNTY DISCLOSURES OF REAL PARTIES IN INTERES AND LAND USE PROCEEDINGS



A. INTRODUCTION

Under the mandatory provisions of Va. Code Ann. § 15.2-2287.1, each member of the Board of Supervisors, Planning Commission, and the Board of Zoning Appeals must make a full public disclosure of any business or financial relationship (including gifts or donations received as described in this Affidavit) that the member has or has had with the applicant, title owner, contract purchaser, or lessee of the land or their agent within twelve months prior to a hearing. This Code Section is specifically applicable only to Loudoun County.

In addition, pursuant to Va. Code Ann. § 15.2-2289, the Board of Supervisors for Loudoun County had previously adopted an ordinance requiring the submission of a completed Disclosure of Real Parties in Interest Form. See 1993 Revised Zoning Ordinance, Section 6-403(A).

The Loudoun County Board of Supervisors has directed County Staff to prepare land use affidavit forms to be used with rezoning, special exception, and variance applications, and reaffirmation procedures for affidavits. The "Affidavit" and "Reaffirmation of Affidavit" forms shall not be altered or modified in any way. Any form that is altered or modified in any way will not be accepted.

With the submission of any such zoning application, you are required to submit an Affidavit. Prior to a public hearing, you will be required to reaffirm your Affidavit in accordance with the reaffirmation procedures.

B. INSTRUCTIONS

- 1. Fill out the Affidavit and file with Application.
- 2. All listings which include PARTNERSHIPS, CORPORATIONS, or TRUSTS, must include the names of beneficiaries, broken down successively until: (a) only individual persons are listed or (b) the listing is a corporation having more than 100 shareholders that has no shareholder owning 10% or more of any class of stock. In the case of an Applicant, title owner, contract purchaser, or lessee of the land that is a partnership, corporation, or trust, such successive breakdown must include a listing and further breakdown of all its partners (general and limited), of its shareholders as required above, and of beneficiaries of any trusts. Such successive breakdown must also include breakdowns of any partnership, corporation, or trust owning 10% or more of the applicant, title owner, contract purchaser, or lessee of the land.
- 3. <u>Limited liability companies and real estate investment trusts and their equivalents are treated as corporations</u>, with members being deemed the equivalent of shareholders; managing members shall also be listed.

6997483.3 Revised January 6, 2009 1

Altachment 2

- 4. Prior to each and every public hearing on a Zoning Map Amendment, Zoning Concept Plan Amendment, Zoning Ordinance Modification, Special Exception, Commission Permit, Certificate of Appropriateness or Variance, and prior to Board action, the Applicant shall review the affidavit and provide any changed or supplemental information including business or financial relationships of the type described above, that arise on or after the date of this application. A "Reaffirmation of Affidavit" form is available for your use online at: http://inetdocs.loudoun.gov/planning/docs/documentsandfor/index.htm
- 5. As used in these forms "real parties in interest" shall include all sole or joint property owners, parties who have legal interest in the protection of the property such as a trustee or executor, parties who have an equitable or beneficial interest in the property, such as beneficiaries of a trust, and, in the case of corporations, all stockholders, officers, and directors. Pursuant to Va. Code Ann. § 15.2-2289, the requirement of listing names of stockholders, officers, and directors shall not apply to a corporation whose stock is traded on a national or local stock exchange and having more than 500 shareholders.
- 6. In the case of a condominium, the requirements shall apply only to the title owner, contract purchaser, or lessee if they own 10% or more of the units in the condominium.

- I, Scott Harris, do hereby state that I am an

 Applicant
 - _X_ Applicant's Authorized Agent listed in Section C.1. below

in Application Number(s): Eastgate Route 50, Application Number TBD and that to the best of my knowledge and belief, the following information is true:

C. DISCLOSURES: REAL PARTIES IN INTEREST AND LAND USE PROCEEDINGS

1. REAL PARTIES IN INTEREST

The following constitutes a listing of the names and addresses of all APPLICANTS, TITLE OWNERS, CONTRACT PURCHASERS and LESSEES of the land described in the application* and if any of the forgoing is a TRUSTEE** each BENEFICIARY of such trust, and all ATTORNEYS, and REAL ESTATE BROKERS, and all AGENTS of any of the foregoing.

All relationships to the persons or entities listed above in **BOLD** print must be disclosed. Multiple relationships may be listed together (ex. Attorney/Agent, Contract Purchaser/Lessee, Applicant/Title Owner, etc.) For a multiple parcel application, list the Parcel Identification Number (PIN) of the parcel(s) for each owner(s).

PIN	NAME (First, M.I., Last)	ADDRESS (Street, City, State, Zip Code)	RELATIONSHIP (Listed in bold above)
097-18-7545-000 128-49-6066-000	EG Development, LLC	3232 McKinney Avenue, Suite 890, Dallas, TX 75204	Applicant/Title Owner
·	Scott Harris	3232 McKinney Avenue, Suite 890, Dallas, TX 75204	Authorized Agent
-1.90			
1	77		

^{*} In the case of a condominium, the title owner, contract purchaser, or lessee of 10% or more of the units in the condominium.

Check if applicable:		
There are additional Real Pa	arties in Interest. See Attachm	ent to Paragraph C-1
6997483.3 Revised January 6, 2009	3	

^{**} In the case of a TRUSTEE, list Name of Trustee, name of Trust, if applicable, and name of each beneficiary.

The following constitutes a listing of the SHAREHOLDERS of all corporations disclosed in this affidavit who own 10% or more of any class of stock issued by said corporation, and where such corporation has 100 or fewer shareholders, a listing of all of the shareholders, and if such corporation is an owner of the subject land, all OFFICERS and DIRECTORS of such corporation. (Include sole proprietorships, limited liability companies and real estate investment trusts).

Name and Address of Corporation: (complete name, street address, city, state, zip code)

EG Development, LLC, a Delaware limited lia 890, Dallas, TX 75204	bility company, 3232 McKinney Avenue, Suite
Description of Corporation: _X_ There are 100 or fewer shareholders and as	ll shareholders are listed below.
There are more than 100 shareholders, an class of stock issued by said corporation are listed	nd all shareholders owning 10% or more of any ed below.
There are more than 100 shareholders but roof stock issued by said corporation, and no share	no shareholder owns 10% or more of any class eholders are listed below.
There are more than 500 shareholders and exchange.	stock is traded on a national or local stock
Names of Shareholders:	
SHAREHOLDER NAME SHAREHOLDER NAME	
(First, M.I., Last)	(First, M.I., Last)
Corona Real Estate Holding Company, L.L.C.	
3 1	
	•
74.972	
	•
Names of Officers and Directors:	
NAME	Title
(First, M.I., Last)	(e.g. President, Treasurer)
Scott Harris	Authorized Agent
West Constitution of the C	
70 4 5 5 5 5 5 5 5 5 5 5 5 5 5 5 5 5 5 5	

Check if applicable:

X There is additional Corporation Information. See Attachment to Paragraph C-2.

The following constitutes a listing of the SHAREHOLDERS of all corporations disclosed in this affidavit who own 10% or more of any class of stock issued by said corporation, and where such corporation has 100 or fewer shareholders, a listing of all of the shareholders, and if such corporation is an owner of the subject land, all OFFICERS and DIRECTORS of such corporation. (Include sole proprietorships, limited liability companies and real estate investment trusts).

Corona Real Estate Holding Company, L.L. McKinney Avenue, Suite 890, Dallas, TX 7520	C., a Delaware limited liability company, 3232
Description of Corporation: _X_ There are 100 or fewer shareholders and a	all shareholders are listed below.
There are more than 100 shareholders, a class of stock issued by said corporation are list	nd all shareholders owning 10% or more of any ted below.
There are more than 100 shareholders but of stock issued by said corporation, and no share	no shareholder owns 10% or more of any class reholders are listed below.
There are more than 500 shareholders and exchange.	l stock is traded on a national or local stock
Names of Shareholders:	
SHAREHOLDER NAME	SHAREHOLDER NAME
(First, M.I., Last)	(First, M.I., Last)
Corona Land Company, LLC	
Names of Officers and Directors:	
NAME	Title
(First, M.I., Last)	(e.g. President, Treasurer)

Check if applicable:

X There is additional Corporation Information. See Attachment to Paragraph C-2.

The following constitutes a listing of the SHAREHOLDERS of all corporations disclosed in this affidavit who own 10% or more of any class of stock issued by said corporation, and where such corporation has 100 or fewer shareholders, a listing of all of the shareholders, and if such corporation is an owner of the subject land, all OFFICERS and DIRECTORS of such corporation. (Include sole proprietorships, limited liability companies and real estate investment trusts).

Name and Address of Corporation: (complete name, street address, city, state, zip code) Corona Land Company, LLC, a Delaware limited liability company, 3232 McKinney Avenue, Suite 890, Dallas, TX 75204

Description of Corporation: X There are 100 or fewer shareholders and all shareholders are listed below.
There are more than 100 shareholders, and all shareholders owning 10% or more of any class of stock issued by said corporation are listed below.
There are more than 100 shareholders but no shareholder owns 10% or more of any class of stock issued by said corporation, and no shareholders are listed below.
There are more than 500 shareholders and stock is traded on a national or local stock exchange.
Names of Sharahaldara

Names of Shareholders:

SHAREHOLDER NAME (First, M.I., Last)	SHAREHOLDER NAME (First, M.I., Last)
Corona Associates, LLC	
No other member owns 10% or more of the Applicant/Title Owner.	
4444	

Names of Officers and Directors:

NAME (First, M.I., Last)	Title (e.g. President, Treasurer)		

Check if applicable:

X There is additional Corporation Information. See Attachment to Paragraph C-2.

2. CORPORATION INFORMATION (see also Instructions, Paragraph B.3 above)

The following constitutes a listing of the **SHAREHOLDERS** of all corporations disclosed in this affidavit who own 10% or more of any class of stock issued by said corporation, and where such corporation has 100 or fewer shareholders, a listing of all of the shareholders, and if such corporation is an owner of the subject land, all **OFFICERS** and **DIRECTORS** of such corporation. (Include sole proprietorships, limited liability companies and real estate investment trusts).

Name and Address of Corporation: (complete name, street address, city, state, zip code) Corona Associates, LLC, a Delaware limited liability company, 3232 McKinney Avenue, Suite 890, Dallas, TX 75204

Description of Corporation: X_{-} There are 100 or fewer shareholders and all shareholders are listed below.
There are more than 100 shareholders, and all shareholders owning 10% or more of an class of stock issued by said corporation are listed below.
There are more than 100 shareholders but no shareholder owns 10% or more of any class of stock issued by said corporation, and no shareholders are listed below.
There are more than 500 shareholders and stock is traded on a national or local stock exchange.

Names of Shareholders:

SHAREHOLDER NAME (First, M.I., Last)	SHAREHOLDER NAME (First, M.I., Last)
Corona Land Investors, LLC	
Greenfield Corona, LLC	
RSF Corona Partners, L.P.	

Names of Officers and Directors:

NAME (First, M.I., Last)	Title (e.g. President, Treasurer)

Check	if	anni	lica	ble
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X There is additional Corporation Information. See Attachment to Paragraph C-2.

2. CORPORATION INFORMATION (see also Instructions, Paragraph B.3 above)

The following constitutes a listing of the SHAREHOLDERS of all corporations disclosed in this affidavit who own 10% or more of any class of stock issued by said corporation, and where such corporation has 100 or fewer shareholders, a listing of all of the shareholders, and if such corporation is an owner of the subject land, all OFFICERS and DIRECTORS of such

corporation. (Include sole proprietorships, limit trusts).	ted liability companies and real estate investment
Name and Address of Corporation: (complete Corona Land Investors, LLC, a Delaware limit 2100, San Francisco, California 94111	e name, street address, city, state, zip code) ed liability company, One Maritime Plaza, Suite
Description of Corporation: _X There are 100 or fewer shareholders and	all shareholders are listed below.
There are more than 100 shareholders, as class of stock issued by said corporation are list	nd all shareholders owning 10% or more of any ted below.
There are more than 100 shareholders but of stock issued by said corporation, and no share	no shareholder owns 10% or more of any class eholders are listed below.
There are more than 500 shareholders and exchange.	stock is traded on a national or local stock
Names of Shareholders:	
SHAREHOLDER NAME	SHAREHOLDER NAME
(First, M.I., Last)	(First, M.I., Last)
There are no members that own 10% or more	
of the Applicant/Title Owner.	
1910	
Names of Officers and Directors:	
NAME	Title
(First, M.I., Last)	(e.g. President, Treasurer)
	(eigentossus) neustroi)
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WHILE .	5 P. A.
Check if applicable:	

X There is additional Corporation Information. See Attachment to Paragraph C-2.

9

The following constitutes a listing of the **SHAREHOLDERS** of all corporations disclosed in this affidavit who own 10% or more of any class of stock issued by said corporation, and where such corporation has 100 or fewer shareholders, a listing of all of the shareholders, and if such corporation is an owner of the subject land, all OFFICERS and DIRECTORS of such corporation. (Include sole proprietorships, limited liability companies and real estate investment trusts).

Name and Address of Corporation: (complete name, street address, city, state, zip code) Greenfield Corona, LLC, a Delaware limited liability company, 50 North Water Street South Norwalk, CT 06854

Journally CT 00051	
Description of Corporation: There are 100 or fewer shareholders and a	ll shareholders are listed below.
There are more than 100 shareholders, an class of stock issued by said corporation are list	nd all shareholders owning 10% or more of any ed below.
$_X_$ There are more than 100 shareholders but of stock issued by said corporation, and no share	
There are more than 500 shareholders and exchange.	stock is traded on a national or local stock
Names of Shareholders:	
SHAREHOLDER NAME	SHAREHOLDER NAME
(First, M.I., Last)	(First, M.I., Last)
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Names of Officers and Directors:	
NAME	Title
(First, M.I., Last)	(e.g. President, Treasurer)
The state of the s	
	•
Check if applicable:	
There is additional Corporation Information	1. See Attachment to Paragraph C-2.

The following constitutes a listing of all of the **PARTNERS**, both **GENERAL** and **LIMITED**, in any partnership disclosed in the affidavit.

Partnership name and address: (complete name, street address, city, state, zip)

RSF Corona Partners, L.P., a Texas limited partnership, 3232 McKinney Avenue, Suite 890, Dallas, TX 75204

___ (check if applicable) The above-listed partnership has no limited partners.

Names and titles of the Partners:

NAME Title					
(First, M.I., Last)	(e.g. General Partner, Limited Partner, etc)				
RSF Genpar IV, LP	General Partner				
RSF Partners IV, LP	Limited Partner				
RSF IV Strategic Partners, LP	Limited Partner				
Co-Investors IV, GP	Limited Partner				
RSF Corona Investors, LP	Limited Partner				
1000					

Check if applicable:

X Additional Partnership information attached. See Attachment to Paragraph C-3.

The following constitutes a listing of all of the **PARTNERS**, both **GENERAL** and **LIMITED**, in any partnership disclosed in the affidavit.

Partnership name and address: (complete name, street address, city, state, zip)

RSF Genpar IV, LP, 3232 McKinney Avenue, Suite 890, Dallas, TX 75204

___ (check if applicable) The above-listed partnership has no limited partners.

Names and titles of the Partners:

NAME	Title
(First, M.I., Last)	(e.g. General Partner, Limited Partner, etc)
There are no partners that own 10% or more of	
the Applicant/Title Owner.	

Check if applicable:

_X__ Additional Partnership information attached. See Attachment to Paragraph C-3.

The following constitutes a listing of all of the **PARTNERS**, both **GENERAL** and **LIMITED**, in any partnership disclosed in the affidavit.

Partnership name and address: (complete name, street address, city, state, zip)

RSF Partners IV, LP, 3232 McKinney Avenue, Suite 890, Dallas, TX 75204

___ (check if applicable) The above-listed partnership has no limited partners.

Names and titles of the Partners:

NAME	Title
(First, M.I., Last)	(e.g. General Partner, Limited Partner, etc)
There are no partners that own 10% or more of	
the Applicant/Title Owner.	

Check if applicable:

_X__ Additional Partnership information attached. See Attachment to Paragraph C-3.

The following constitutes a listing of all of the **PARTNERS**, both **GENERAL** and **LIMITED**, in any partnership disclosed in the affidavit.

Partnership name and address: (complete name, street address, city, state, zip)

RSF IV Strategic Partners, LP, 3232 McKinney Avenue, Suite 890, Dallas, TX 75204

___ (check if applicable) The above-listed partnership has no limited partners.

Names and titles of the Partners:

NAME (First, M.I., Last)	Title (e.g. General Partner, Limited Partner, etc)
There are no partners that own 10% or more of	()
the Applicant/Title Owner.	
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	7-1-1-1

Check if applicable:

X__ Additional Partnership information attached. See Attachment to Paragraph C-3.

The following constitutes a listing of all of the **PARTNERS**, both **GENERAL** and **LIMITED**, in any partnership disclosed in the affidavit.

Partnership name and address: (complete name, street address, city, state, zip)

Co-Investors IV, GP, 3232 McKinney Avenue, Suite 890, Dallas, TX 75204

___ (check if applicable) The above-listed partnership has no limited partners.

Names and titles of the Partners:

NAME	Title
(First, M.I., Last)	(e.g. General Partner, Limited Partner, etc)
There are no partners that own 10% or more of	
the Applicant/Title Owner.	·
	1999

Check if applicable:

_X__ Additional Partnership information attached. See Attachment to Paragraph C-3.

The following constitutes a listing of all of the PARTNERS, both GENERAL and LIMITEI	D,
in any partnership disclosed in the affidavit.	

Partnership name and address: (complete name, street address, city, state, zip)

RSF Corona Investors, L.P., a Texas limited partnership, 3232 McKinney Avenue, Suite 890, Dallas, TX 75204

(check if applicable) The above-listed partnership has no limited partners.

Names and titles of the Partners:

NAME (First, M.I., Last)	Title (e.g. General Partner, Limited Partner, etc)		
There are no partners that own 10% or more of the Applicant/Title Owner.			
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Check if	anni	1Cah	le:

Additional Partnership information attached. See Attachment to Paragraph C-3.

4. ADDITIONAL INFORMATION

a. One of the following options must be checked:

In addition to the names listed in paragraphs C. 1, 2, and 3 above, the following is a listing of any and all other individuals who own in the aggregate (directly as a shareholder, partner, or beneficiary of a trust) 10% or more of the APPLICANT, TITLE OWNER, CONTRACT PURCHASER, or LESSEE of the land:

X Other than the names listed in C. 1, 2 and 3 above, no individual owns in the aggregate (directly as a shareholder, partner, or beneficiary of a trust) 10% or more of the APPLICANT, TITLE OWNER, CONTRACT PURCHASER, or LESSEE of the land:

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Additional information attached. See Attachment to Paragraph C-4(a).

6997483.3 Revised January 6, 2009

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b. That no member of the Loudoun County Board of Supervisors, Planning Commission, Board of Zoning Appeals or any member of his or her immediate household owns or has any financial interest in the subject land either individually, by ownership of stock in a corporation owning such land, or though an interest in a partnership owning such land, or as beneficiary of a trust owning such land.

EXCEPT AS FOLLOWS: NONE.

Check if applicable:	
Additional information attached.	See Attachment to Paragraph C-4(b).

c. That within the twelve-month period prior to the public hearing for this application, no member of the Loudoun County Board of Supervisors, Board of Zoning Appeals, or Planning Commission or any member of his immediate household, either individually, or by way of partnership in which any of them is a partner, employee, agent or attorney, or through a partner of any of them, or through a corporation (as defined in the Instructions at Paragraph B.3) in which any of them is an officer, director, employee, agent or attorney or holds 10% or more of the outstanding bonds or shares of stock of a particular class, has or has had any business or financial relationship (other than any ordinary customer or depositor relationship with a retail establishment, public utility, or bank), including receipt of any gift or donation having a value of \$100 or more, singularly or in the aggregate, with or from any of those persons or entities listed above.

EXCEPT AS FOLLOWS: NONE.

Check if applicable:	
Additional information attached.	See Attachment to Paragraph C-4(c).

D. COMPLETENESS

That the information contained in this affidavit is complete, that all partnerships, corporations (as defined in Instructions, Paragraph B.3), and trusts owning 10% or more of the APPLICANT, TITLE OWNER, CONTRACT PURCHASER, OR LESSEE of the land have been listed and broken down, and that prior to each hearing on this matter, I will reexamine this affidavit and provide any changed or supplemental information, including any gifts or business or financial relationships of the type described in Section C above, that arise or occur on or after the date of this Application.

WITNESS the following signature:	
check one: [] Applicant or [X] Applicant's Authorized Agent	
R. Scott Harris	
(Type or print first name, middle initial and last name and title of signee)	
Subscribed and sworn before me this day of January, 2009, in the State of Texa County/City of Dallas.	as, in the
My Commission Expires: October 6, 202 MICHELLE MO October 6	ON EXPIRES

#21

BOARD OF SUPERVISORS ACTION ITEM BOARD MEMBER INITIATIVE

SUBJECT: Proffer Amendment for Eastgate I and III to amend Route 50 required improvements currently included in VDOT Route 50 Improvement Project.

INITIATED BY: Supervisor Miller

ELECTION DISTRICT: Dulles

BACKGROUND:

This action item proposes to initiate an amendment to proffers approved with the Eastgate One and Eastgate Three rezoning applications that were approved in February of 2006. The proffers associated with those applications called for the construction of a third westbound lane on Route 50, from the County line to Poland Road. Subsequent to the approval of those applications a VDOT project has been funded to improve Route 50 to a six lane facility from Lee Road in Fairfax County to Poland Road in Loudoun County. The proffered improvements would have to be removed and replaced when the VDOT project is constructed. The proffer amendment process is intended to allow for either a) an equivalent value of the proffered road improvements to be provided by the property owner, or b) alternative improvements to be constructed by the property owner, as agreed to by the County. The amendment process will require a staff review and analyses and public hearings before the Planning Commission and Board of Supervisors prior to final approval.

In meetings with the District Supervisor and the original applicant for the rezoning it has been made clear that the situation represents an opportunity to gain alternative improvements elsewhere in the area or a cash equivalent value of the earlier proposed 3rd lane in addition to the benefit of the VDOT project. The VDOT project will fulfill the intent of the original proffer and provides an additional eastbound lane as well. This will be a much needed regional improvement for access on the Route 50 corridor between Loudoun and Fairfax. Correspondence to staff from representatives of the current property owner is included in Attachment 2.

ISSUES:

1. The review of the proffer amendment will need to address the specifics of an alternative improvement, including the timing of when the alternative would be constructed, and a precise cash value of the originally proposed 3rd lane. The proffered improvements were required to be in place and open to traffic prior to the issuance of the first occupancy permit for any residential units on the property.

Attachment 3

A-45

2. The review of the proffer amendment will also need to address the timing of the VDOT project based on project timelines to be provided by VDOT.

FISCAL IMPACT:

The initiation of a proffer amendment at the Board's direction will result in no application fee for the property owner. Given the narrow scope of the amendment it seems reasonable that extensive review time will not be necessary and the beneficial implication of an alternative improvement or cash equivalent contribution, would be in the County's best interest.

MOTIONS:

1. I move that the Board of Supervisors adopt the attached Resolution of Intent to Initiate a Zoning Concept Plan Amendment for the applicable Eastgate applications and that staff be directed to conduct a review an analyses of the matter and schedule the application for Planning Commission and Board of Supervisors public hearings.

STAFF CONTACT: Shaun Daniels, Staff Aide to Supervisor Miller

Attachments:

- 1. Resolution of Intent to Initiate a Zoning Concept Plan Amendment for ZMAP 2004-0020 Eastgate I and ZMAP 2005-0002 Eastgate III
- 2. Correspondence from John Foote dated August 21, 2008

A-46

Resolution of Intent to Initiate a Zoning Concept Plan Amendment for Eastgate I and Eastgate III Rezoning Applications September 2, 2008

WHEREAS, on February 21, 2006 the Board of Supervisors approved three rezoning applications for the Eastgate project in the Dulles District which were ZMAP 2004-0020, ZMAP 2005-0002 and ZMAP 2005-0003; and

WHEREAS, ZMAP 2004-0020 and ZMAP 2005-0003, known as Eastgate I and Eastgate III applications, contained proffers which require the construction of Route 50 improvements between the County line and Poland Road, consisting of a third westbound lane; and

WHEREAS, subsequent to the approval of the above rezonings, a Virginia Department of Transportation (VDOT) project to improve Route 50 to a six lane facility from Lee Road in Fairfax County to Poland Road in Loudoun County, which includes the area of the above proffered improvement; has been funded; and

WHEREAS, VDOT has undertaken a review of the improvement plans prepared by the property owner pursuant to the above proffer and determined that said improvements would most likely be removed and replaced when the VDOT project is constructed; and

WHEREAS, the property owner has expressed interest in providing either alternative improvements of an equivalent value or a monetary contribution of an equivalent value as a replacement to the proffered improvements;

WHEREAS, a zoning concept plan amendment application will allow for and require a thorough review by staff of the merits of the amendment to include the timing, precise value and specific details of the alternative improvements or equivalent monetary contribution; and

WHEREAS, the VDOT project, in combination with the property owner's alternative improvement or equivalent contribution, will provide a positive benefit to the community in the form of an improved transportation network and additional improvements or contributions to improvements in the area of the Eastgate project; and

NOW THEREFORE be it resolved that the Loudoun County Board of Supervisors initiate an amendment to the proffers of the applicable Eastgate rezoning applications such that the required Route 50 third westbound lane improvements be amended to allow for alternative improvements of an equivalent value or an monetary contribution of equivalent value, with such details, and other matters pertinent to be provided through the review of a Zoning Concept Plan Amendment hereby initiated.

Board Member Initiative – Proffer Amendment for Eastgate I and III to Amend Route 50 Required Improvements Currently Included in VDOT Route 50 Improvement Project Board Business Meeting September 2, 2008 Page 2

WHEREAS, the property owner has expressed interest in providing either alternative improvements of an equivalent value or a monetary contribution of an equivalent value as a replacement to the proffered improvements; and

WHEREAS, a zoning concept plan amendment application will allow for and require a thorough review by staff of the merits of the amendment to include the timing, precise value and specific details of the alternative improvements or equivalent monetary contribution; and

WHEREAS, the VDOT project, in combination with the property owner's alternative improvement or equivalent contribution, will provide a positive benefit to the community in the form of an improved transportation network and additional improvements or contributions to improvements in the area of the Eastgate project; and

NOW, THEREFORE, BE IT RESOLVED that the Loudoun County Board of Supervisors initiate an amendment to the proffers of the applicable Eastgate rezoning applications such that the required Route 50 third westbound lane improvements be amended to allow for alternative improvements of an equivalent value or a monetary contribution of equivalent value, with such details, and other matters pertinent to be provided through the review of a Zoning Concept Plan Amendment hereby initiated.

Seconded by Mr. Miller.

Voting on the Motion: Supervisors Buckley, Burk, Delgaudio, Kurtz, McGimsey, Miller, and York - Yes; Supervisor Burton - No; and Supervisor Waters - Absent for the Vote.

A COPY TESTE:

DEPUTY CLERK FOR THE LOUDOUN COUNTY BOARD OF SUPERVISORS

(21-Board Member Initiative - Proffer Amendment for Eastgate I and III to Amend Route 50 Required Improvements Currently Included in VDOT Route 50 Improvement Project)



John H. Foote (703) 680-4664 Ext. 114 jfoote@pw.thelandlawyers.com Fax: (703) 680-2161

March 10, 2009

Ms. Ginny Rowen Loudoun County Department of Planning 1 Harrison Street, S.E. Leesburg VA 20175



Re: Comment Response Letter and Resubmission March 2009

East Gate I and III

ZCPAs 2008-0010 and 2008-11

Dear Ginny:

The following constitutes the Owner's responses to the additional comments that have been received from the County with respect to these cases. As before, we have taken the substantive comments from the analyses that have been forwarded to us, and have restated those comments in the left hand column, and the Owner's response is set out to the right. We are providing eight copies of these responses, and are forwarding these documents in electronic form as well.

In addition to these responses, we are providing you with (a) copies of the draft proffers redlined against the version that the staff last reviewed, and (b) copies of Delta View comparisons of all the proposed revisions against the originally approved proffers.

Comment	Response
Office of Transportation Services /	
February 24, 2009	
<u>Issue 2:</u> The latest bond cost estimate for	The Owner has been provided a bond estimate
the cost of constructing the East Gate third lane	and has been asked to revise the proffers to
improvements, dated September 28, 2006 was	reflect it. This has been done.
\$1,525,000. An updated current cost estimate	
would most likely be higher. Such an estimate	By memo dated March 4, 2009, from Kenneth
could be prepared by the project engineer for	Harwood to Ginny Rowen and Terrie Laycock,
CPAP 2006-0122 and submitted to the	the bond amounts for the Route 50
County's Department of Building and	improvements, including a 20% contingency
Development (B&D). Upon approval by B&D	sum, are:
this amount should be included under the cost	

PHONE 703 680 4664 ■ FAX 703 680 6067 ■ WWW.THELANDLAWYERS.COM 4310 PRINCE WILLIAM PARKWAY, SUITE 300 ■ PRINCE WILLIAM, VA 22192

ARLINGTON OFFICE 703 528 4700 I LOUDOUN OFFICE 703 737 3633

Attorneys at LAW

A-49

Ms. Ginny Rowen March 10, 2009 Page 2 of 8

equivalency portion of the proffers. This contribution should be paid in full, with appropriate escalations, prior to the approval of the first zoning permit or site plan, whichever is first in time, on the subject properties.

Route 50 Westbound Lane -- \$1,521,000 Route 50 and Pleasant Valley -- \$453,000 Total \$1,974,000

The Proffers already provide that these sums shall be paid "prior to the first occupancy permit in either East Gate 1 . . . or East Gate 3." See revised Proffer VEb of East Gate 3. This is the same formulation that was approved in the original Proffers. See Proffer VC2a. The Owner prefers to retain the same formulation throughout the proffers.

Owner's Original Response: The Owner suggests that the proffers not specify an There is currently a mechanism in place for the calculation of the cash equivalent contribution that other comments have suggested be employed. The timing of this payment, as well as the timing of other improvements to which the Owner committed, is set out in the revised proffer statement that has been modified recommended by the staff.

Please see the next response.

Current Status: The applicant's response is likely referring to the bond estimate cost process managed by the County's Department of Building and Development (B&D). Please confirm if this is the case. If so, B&D recently requested an updated cost estimate from the applicant's engineer but has not received this material yet. General language could be used saying the contribution amount would be the latest estimated cost of construction as approved by the Department of Building and Development. It would be useful to know this amount by the time these applications reach public hearing. This cost equivalency should be all-inclusive of all costs which would have been incurred by the applicant in the construction of the third lane including, for example, utility relocation.

The Harwood memorandum referenced above gave a single cost estimate for the construction of the Route 50 westbound lane. Because the Proffers for East Gate 1 contemplate the construction of 3,700 feet of that road, and those for East Gate 3 the construction of 3,500 feet, the Owner has distributed the total cost between the two projects in the same percentage that the separate sections bear to the total of 7,200 feet of construction. Thus, East Gate 1 has been assigned 49% of the cost (plus the cost of the Route 50/Pleasant Valley construction) and East Gate 3 has been assigned 51% of the Route 50 cost.

East Gate 1 is therefore responsible for a total of \$1,198,290, and East Gate 3 is responsible for a total of \$775,710, for a combined total in-

	lieu contribution of the aforementioned \$1,974,000.
Issue: Deletion of Proffer C1b of ZCPA 2008-0010. The deleted language is: "Construct a second westbound Route 50 to southbound Pleasant Valley Road left turn lane, dedicated right turn lane and right turn acceleration lane; signal adjustments" VDOT should confirm whether these intersection improvements would be demolished when the VDOT Six-lane Expansion Project is constructed. If they would, the intersection improvements should be treated the same as the Route 50 third westbound lanes and covered with a cash equivalency provision. If the intersection improvements would not be demolished by the VDOT project, they should be constructed by the applicant. Further coordination with VDOT is needed on this issue, including timing of construction.	The Owner understands that VDOT has provided the assurance that the County requires.
Rory L. Toth, Planner, Zoning Administration / March 4, 2009	
A. PROFFERS FOR EAST GATE ONE	
1. Proffer Statement Title Page One. Add the revision date of the proffer statement to the heading on page one.	This has been done. The Owner does not know the exact date of the revision until the Board has scheduled a hearing, but will insert that date in the final proffer statement.
2. Proffer Statement Opening Paragraph. Staff notes that this proffer is drafted in a manner that the East Gate One proffers will not be approved unless the East Gate I proffers are approved. Staff questions the reasoning the proffer is drafted in this manner.	The Owner's agreement to provide cash in lieu of the construction of improvements is a direct result of the VDOT project, which makes the previously proffered improvements unnecessary. This change materially affects each of these rezonings, and they must, therefore, be linked to each other in this way.

It is of little utility to the Owner to be permitted to make a cash contribution for road improvements in the one case, only, for some reason that cannot be foreseen, be unable to do so in the other. Thus, the Owner would prefer either to construct the improvements that it was required to do by the original rezoning, or pay the requisite cash-in-lieu.

3. **Proffer V.C.2.d. Regional Road Improvements. Phasing.** Staff recommends that the proffer specify what the actual amount will be with regard to the contribution for the traffic signal. Staff defers additional comment to the Office of Transportation Services (OTS).

We have been provided with no separate estimate of the cost of this signalization. While the more significant cash-in-lieu contribution has been set forth n the Proffers, this can be ascertained using the mechanism already provided.

4. Proffer V.E.b and c. Cash Equivalent Contribution. Staff recommends that the proffer clarify the dollar amount with regard to the cash contributions. Staff defers additional comment to the OTS.

The proffers have been amended to reflect a specific dollar amount for the cash contribution in lieu of construction of the Route 50 improvements to be undertaken by VDOT.

In addition, the Applicant has proffered substantial conformance with Sheets 1, 5, 6, 7, 9, and 10 of the East Gate One plan ZMAP-2004-0020 dated November 22, 2004, revised through January 27, 2006. It is noted that Sheets 4, 7, 9, and 11 on the Rezoning Plat contain notes, signals, turn lanes and interchange improvements on Route 50 and other roads.

The Owner's engineers have reviewed have reviewed plan sheets 4, 7, 8, 9 and 11 identified in this comment. Sheets 4, 8, and 9 refer to a future interchange at Tall Cedars Parkway and Route 50 and this has not changed. Sheet 11 is unrelated to Route 50 improvements, but rather to a Zoning Ordinance Modification. Sheet 7 shows the limits of the third lane on Route 50 and the turn lanes at Pleasant Valley and Route 50. These drawings do not identify any party's obligations with respect to construction, and the Proffers still refer to these improvements. We do not believe that there is any need to revise the drawings.

Also, Staff reiterates that the proffer language be revised so that it is stated more clearly that the proffered Route 50 improvements shown on the Rezoning Plat that will constructed by VDOT are not to be constructed by the Applicant. In addition, per Proffer V.E.c, the proffered contribution amount will be based on the County's bonding estimate for the project. Since the construction is being done as a VDOT project, Staff is concerned with the

The Proffers have been further amended to make it clear that the Route 50 improvements will not be constructed by the Owner.

proffer language and questions whether there will be a County bond estimate for the project, as typically VDOT projects are not bonded with the County.	As noted above, the Owner has been provided a bond estimate and has revised the Proffers to reflect it.
5. Staff notes that some of the East Gate One proffers have been partially or completely fulfilled. Staff recommends that the Applicant provide a proffer status to the County.	Attached to this letter is a proffer status report dated June 2, 2008, for East Gate 1. According to the Owner's engineers at christopher consultants, the only proffer that has been "triggered" thus far is the offsite landscaping in proffer VI.D.2. This proffer was satisfied as part of Section 1 plan review.
B. PROFFERS FOR EAST GATE THREE	
1. Proffer Statement Title Page One. Add the revision date of the proffer statement to the heading on page one.	This has been done. The Owner does not know the exact date of the revision until the Board has scheduled a hearing, but will insert that date in the final proffer statement.
2. Proffer Statement Opening Paragraph. Staff notes that this proffer is drafted in a manner that the East Gate One proffers will not be approved unless the East Gate III proffers are approved. Staff questions the reasoning the proffer is drafted in this manner.	The Owner's agreement to provide cash in lieu of the construction of improvements is a direct result of the VDOT project that makes the previously proffered improvements unnecessary. This change dramatically affects each of these rezonings, and they must, therefore, be linked one to the other. It is of little utility to the Owner to be permitted to make a cash contribution for road improvements in one case, only, for some reason that cannot be foreseen, be unable to do so in the other. Thus, the Owner would prefer either to construct the improvements that it was required to do by the original rezoning, or pay the requisite cash-in-lieu.
3. Proffer Statement Opening Paragraph and Proffer I. Rezoning Plat. The Applicant has proffered substantial conformance with Sheets 1, 5, 6, 7,8, 9, and 10 of the East Gate Three plan ZMAP-2005-0003 dated November 22, 2004, revised through February 13, 2006. It is noted that Sheets 4, 7, 8, 9, and 11 on the	Please see the response above regarding conformance of the Proffers with the plan sheets.

Ms. Ginny Rowen March 10, 2009 Page 6 of 8

Rezoning Plat contain notes, signals, turn lanes and interchange improvements on Route 50 and other roads that need to be revised to reflect the amended proffer statement for East Gate Three. Staff reiterates that the proffer language be revised so that it is stated more clearly that the proffered Route 50 improvements shown on the Rezoning Plat that will constructed by VDOT are not to be constructed by the Applicant.	The Proffers have been further amended to make it clear that the Route 50 improvements will not be constructed by the Owner.
4. Proffer V.F.a, b, and c. Cash Equivalent Contribution. Staff recommends that the proffer specify the dollar amount with regard to the cash contributions. Staff defers additional comment to the OTS. Also, Staff recommends that the proffer language be revised so that it is stated more clearly that the proffered Route 50 improvements shown on the Rezoning Plat that will constructed by VDOT are not to be constructed by the Applicant. In addition, Proffer V.F.b & c Staff notes that the Owner is agreeing to contribute an amount equal to the cost of construction for the 3rd westbound lane on Route 50. Per proffer V.F.c, the amount will be based on the County's bond estimate for the project. Since the proposed construction is being done as a VDOT project, Staff is concerned with the proffer language and questions whether there will be a County bond estimate for the project, as typically VDOT projects are not bonded with the County.	The proffers have been amended to reflect a specific dollar amount for the cash contribution in lieu of construction of the Route 50 improvements to be undertaken by VDOT. The Owner has been provided a bond estimate and has been asked to revise the proffers to reflect it. As noted above, this has been done.
Department of Planning / Marie Genovese / March 4, 2009	
Staff understands the Department of Building and Development recently requested an updated cost estimate for the cost of	This has been done as noted above.

constructing the Route 50 improvements proffered with the East Gate I and East Gate III rezonings. Upon approval by Building and Development, this amount should be included under the cost equivalency portion of the proffers. Staff defers to the Office of Transportation Services regarding amendments to the proffer language to address the updated cost estimate.	
East Gate III Proffer VC2c states "As used in these proffers, the term "open to traffic" shall mean that the improvements are open to the public for use, but have not yet been accepted into the VDOT system for maintenance". As the Regional Road Improvements included in the amended proffers pertain to two traffic signals and the dedication of right of way, staff is unsure why this proffer has been included.	Revisions to the Proffers make this term appropriate only to East Gate 1, since the phrased is not used in East Gate 3. It has therefore been eliminated from the former. It remains useful to clarify the commencement of obligations in the latter.
East Gate III Proffer VFa discusses cash equivalent contributions in lieu of actual construction for transportation improvements described in proffers VC1a, VC1b, and VC1c. Staff notes that Proffer VC1c pertains to the reservation of Defender Drive and does not include construction.	VC1c has been removed from that Proffer, since there is no construction cost associated with the reservation.
PREVIOUSLY UNADDRESSED ISSUE	During the Owner's review of the most recent comments, it was observed that the escalator provision with respect to cash contributions presently commences from a base year of 2006. The redrafted proffers apply a base year of 2009 to the in-lieu contribution for the Route 50 improvements that have given rise to these ZCPAs.

Thank you again for your kind assistance.

Ms. Ginny Rowen March 10, 2009 Page 8 of 8

Sincerely yours,

WALSH, COLUCCI, LUBELEY, EMRICH & WALSH, P.C.

John H. Foote

JHF/jhf

cc: Jim Duszynski
David Bennion
Ken Griffin
Paul Tiffin
Lou Canonico
Randy Minchew



FEB 2 0 2009
PLANNING DEPARTMENT

John H. Foote (703) 680-4664 Ext. 114 jfoote@pw.thelandlawyers.com Fax: (703) 680-2161

February 19, 2009

Ms. Ginny Rowen Loudoun County Department of Planning 1 Harrison Street, S.E. Leesburg VA 20175

Re: Comment Response Letter and Resubmission

East Gate I and III

ZCPAs 2008-0010 and 2008-11

Dear Ginny:

The following constitutes the Owner's responses to the comments that have been received from the County with respect to these cases. We have taken the substantive comments from the analyses that have been forwarded to us, and have restated those comments in the left hand column. The Owner's response is set out to the right. We are providing eight copies of these responses, and of the revised Proffer Statements, as you have requested, and are forwarding each of these documents in electronic form as well.

Comment	Response
The Letters of Clarification for both East Gate	The Letters of Clarification for ZMAP 2004-
One and East Gate Three should be redlined to	0020, East Gate One, dated February 16, 2006,
reflect the changes that are reflected in these	and ZMAP 2005-0003, East Gate Three, of the
ZCPAs.	same date, linked the residential development
	of the two projects to the Owner's construction
	of additional lanes on Route 50 from Poland
	Road east to the proposed intersection of Tall
	Cedars Parkway. As the staff is aware, this
	regional improvement is now to be done by
	VDOT, and is the reason that the Board has
	initiated ZCPAs for both projects in to permit
	the Owner to make a cash-in-lieu contribution
	rather than construct that improvement.
9	The Owner proposes that the revised proffer
	statements in these cases reflect all of the

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	changes to the previously approved proffers for both projects, and that the substance of the Letters of Clarification be incorporated into those proffers for the sake of clarity in the applicable records of those cases.
Marie Genovese, AICP, Planner Community Planning / January 21, 2009	
Staff recommends revising the submission materials to accurately represent a strike-through version of the proffers approved with the East Gate I and East Gate III rezonings.	We have forwarded with this a redline comparing the redrafted proffer statement (revised in accordance with the comments received) against the original proffers for each of these two cases as they were forwarded to us by the Planning Office. This should resolve any issues with proffer statements that we previously had available to us.
Staff recommends revising the phasing proffers associated with the East Gate I and East Gate III applications. The East Gate I phasing proffer VC2a should be revised removing the reference to road improvements proffered with the East Gate III application. Similarly the East Gate III phasing proffers VC2a and VC2b should be removed from the amended proffers.	The Owner concurs. After the submission was made, the Owner observed that its initial redraft of the Proffers as submitted had created a different linkage between the two projects than was previously extant. That linkage should not have been created and the proffers have been changed to replicate the linkage and timing of the original proffers as noted in the first response above.
Staff does not support the proposed change to the calculation of costs in lieu of construction for the Route 50/Tall Cedars Parkway intersection.	This has been changed as recommended to reflect the cost determination mechanism already in place.
Staff recommends retaining the wording as previously approved that in-lieu-of construction costs shall occur at the time the owner would otherwise have been required by the proffers to bond or construct such improvements.	This has been changed to reflect the timing of the in-lieu payments as previously provided in the original proffers.

Staff recommends revising the proffers associated with both the East Gate I and East Gate III applications to state that the Route 50 transportation improvements cash equivalent contribution shall be determined in accordance with Proffer VEb as proposed with the East Gate I application and Proffer VFc as proposed with the East Gate III application.	The revised proffers reflect the contribution calculation already in place. Former Proffer VEb for East Gate I is now Proffer VEc, but that is the means of calculating in-lieu contributions in the original proffers. Proffer VFc remains correctly identified.
Staff recommends revising East Gate III Proffer VFa removing the reference to Proffer VC1c.	This has been done.
The East Gate I amended proffers state on the first page that the previously referred to "Applicant" will now be referred to as "Owner". The proffers however, have not been updated changing all references from "Applicant" to "Owner".	This has been corrected.
East Gate I Proffer VC1 "and" has been incorrectly removed from the first sentence. The sentence should read "In accordance with the phasing outlined below, the Applicant shall design, bond, and construct the regional road improvements identified herein".	This has been corrected.
East Gate I Proffer V.E.b. in the first sentence change "this" to "these".	This has been corrected.
Rory L. Toth, Planner, Zoning Administration / January 15, 2009	
Proffers for East Gate I 1. Proffer Statement Title Page One. On Page 1 at the heading of the proffer statement, include the ZCPA application number "ZCPA-2008-0010" and amend the revision date of the proffers so it does not read "As Further Revised 2008."	This has been done.

2. Proffer Statement Opening Paragraph. On Page 1, insert the ZCPA application numbers for the East Gate One and East Gate Three applications (ZCPA-2008-0010 and ZCPA-2008-0011) in the last sentence of the opening paragraph. Remove Footnote 1 that states "The use of "A" and "B" is as a placeholder only."

This has been done.

3. Proffer V.C.2.d. Regional Road Improvements. Phasing. Staff recommends clarification of what is meant by the phrase "mutual agreement" in the last sentence of this proffer with regard to the contribution for the traffic signal, as this language is vague. Staff defers additional comment to the Office of Transportation Services (OTS).

This has been changed as recommended to retain the cost determination mechanism that was already in place.

V.E.b. Cash Equivalent Proffer Contribution. Staff recommends clarification of what is meant by the phrase "mutual agreed cost" in this proffer as this is vague. addition, add the correct ZCPA application numbers for East Gate One and East Gate Three to the proffer language. Staff defers additional comment to the OTS. In addition, Applicant has proffered substantial conformance with Sheets 1, 5, 6, 7, 9, and 10 of the East Gate One plan ZMAP-2004-0020 dated November 22, 2004, revised through January 27, 2006. It is noted that Sheets 4, 7, 9, and 11 on the Rezoning Plat contain notes, signals, turn lanes and interchange improvements on Route 50 and other roads. Also, Staff recommends that the proffer language be revised so that it is stated more that the proffered Route improvements shown on the Rezoning Plat that will constructed by VDOT are not to be constructed by the Applicant.

This has been changed as recommended to retain the cost determination mechanism that was already in place. The proffer has also been revised to except from the proffered plans VDOT road improvements, so there is no conflict.

5. Proffer V.E.c. Cash Equivalent Contribution. As per Dan Csizmar Capital Facilities Planner Staff recommends that the cash in lieu of construction contribution for the 3rd westbound lane of Route 50 go to the County for regional road and transit improvements in the vicinity of the property.	This has been changed.
Proffers for East Gate III	
1. Proffer Statement Title Page One. On Page 1 at the heading of the proffer statement, include the ZCPA application number "ZCPA-2008-0011" and amend the revision date of the proffers so it does not read "As Further Revised 2008."	This has been done.
2. Proffer Statement Opening Paragraph. On Page 1, insert the ZCPA application numbers for the East Gate One and East Gate Three applications (ZCPA-2008-0010 and ZCPA-2008-0011) in the last sentence of the opening paragraph. Remove Footnote 1 that states "The use of "A" and "B" is as a placeholder only."	This has been done.
3. Proffer Statement Opening Paragraph and Proffer I. Rezoning Plat. The Applicant has proffered substantial conformance with Sheets 1, 5, 6, 7,8, 9, and 10 of the East Gate Three plan ZMAP-2005-0003 dated November 22, 2004, revised through February 13, 2006. It is noted that Sheets 4, 7, 8, 9, and 11 on the Rezoning Plat contain notes, signals, turn lanes and interchange improvements on Route 50 and other roads that need to be revised to reflect the amended proffer statement for East Gate Three.	The proffer has been redrafted to except from the proffers plans the VDOT road improvements, so that there is not a conflict. The Rezoning Plat has been amended as suggested.
4. Proffer V.C.2.a and b. Phasing. Insert the application number "ZCPA-2008-0010" when referencing the East Gate One application.	This has been done.
referencing the East Gate One application.	
5. Proffer V.F.b. Cash Equivalent	This has been changed as recommended to

C + 13 + 1 C + CC 1 1 1 + CC + 1	
Contribution. Staff recommends clarification of what is meant by the phrase "mutually agreed cost" in this proffer as this is vague. In addition, add the correct ZCPA application numbers for East Gate One and East Gate Three to the proffer language. Staff defers additional comment to the OTS. Also, Staff recommends that the proffer language be revised so that it is stated more clearly that the proffered Route 50 improvements shown on the Rezoning Plat that will constructed by VDOT are not to be constructed by the Applicant.	retain the cost determination mechanism that was already in place.
6. Proffer V.E.c. Cash Equivalent Contribution. As per Dan Csizmar, Capital Facilities Planner, Staff recommends that the cash in lieu of construction contribution for the improvements to Route 50 go to the County for regional road and transit improvements in the vicinity of the property.	This has been done.
7. Proffer IX. Linkage of Residential to Non-Residential Development. Insert the application number "ZCPA-2008-0010" when referencing the East Gate One application.	This has been done.
Office of Transportation Services / January 23, 2009	
1. The construction plans for the East Gate westbound additional third lane on Route 50 are now in 4 th submission review (CPAP 2006-0122). VDOT's most recent comment letter on the construction plans, dated January 5, 2009 is Attachment 1 to this referral. This VDOT letter confirms "The Applicant should understand that whatever is proposed on this plan will probably be demolished by the VDOT project. However, for the purpose of the approval of this plan per County requirement the plan should be developed as an independent stand-alone document as	This is acknowledged.

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	stated above". Please note review of CPAP 2006-0122 is continuing at this time. OTS understands most of the unresolved issues are related to drainage.	
2.	The latest bond cost estimate for the cost of constructing the East Gate third lane improvements, dated September 28, 2006 was \$1,525,000. An updated current cost estimate would most likely be higher. Such an estimate could be prepared by the project engineer for CPAP 2006-0122 and submitted to the County's Department of Building and Development (B&D). Upon approval by B&D this amount should be included under the cost equivalency portion of the proffers. This contribution should be paid in full, with appropriate escalations, prior to the approval of the first zoning permit or site plan, whichever is first in time, on the subject properties.	The Owner suggests that the proffers not specify an amount. There is currently a mechanism in place for the calculation of the cash equivalent contribution that other comments have suggested be employed. The timing of this payment, as well as the timing of other improvements to which the Owner is committed, is set out in the revised proffer statement that has been modified as recommended by the staff.
3.	With respect to alternate improvements, please note that the small remaining segment of Tall Cedars Parkway east of Planting Field Drive has approved construction plans and is bonded for construction. One use of the equivalency funds could be a contribution towards the cost of the future Loudoun County Parkway/Route 50 interchange.	The proffers are so drafted as to permit the County to allocate the cash equivalent contribution to such regional roadway or transit projects as it determines advisable.
4.	Currently the four lane section of Route 50 between the County line and Poland Road operates at LOS F at peak hours. This condition will persist until the completion of construction of the VDOT project, now estimated to be 2013.	This comment requires no response from the Owner.

Ms. Ginny Rowen February 19, 2009 Page 8 of 8

Thank you very much for your kind assistance. As you know, my people are coordinating this process through my office, so that there is a central point of contact. I am copying Mr. Minchew so that he will continue to be aware of these applications. If you have questions, you know where to find me.

Sincerely yours,

WALSH, COLUCCI, LUBELEY, EMRICH & WALSH, P.C.

John H. Foote

JHF/jhf

cc: Jim Duszynski David Bennion Ken Griffin Paul Tiffin Lou Canonico

EQUINOX INVESTMENTS, LLC EAST GATE ONE ZONING CONCEPT PLAN AMENDMENT PROFFER STATEMENT

ZMAP 2004-0020

OCTOBER 31, 2005 (REVISED FEBRUARY 13, 2006)

ZCPA 2008-0010

MARCH 31, 2009

EG Development, LLC, as successor in interest to PVR LLC, (hereinafter referred to the "Owner"), the Owner of the property described as Parcel 38, Loudoun County Tax Map 107 (MCPI# 097-18-7545) and Equinox Investments, LLC, the Applicant (hereinafter referred to jointly as the "Applicants(the "Property") on behalf of themselves itself and their its successors in interest, hereby voluntarily proffer that in the event that the above referenced Parcel 38 (the "Property") is rezoned by the Loudoun County Board of Supervisors (herein after referred to as "the County") to R-8 Single Family Residential ("R-8") and R-16 Townhouse/Multi-Family Residential ("R-16"), proffers that as substantially set forth in the Rezoning Plat dated November 22, 2004, with revisions through January 27, 2006, and further described in its application as approved by ZMAP 2004-0020, which rezoned the Property to the R-8 and R-16 Districts, the development of the Property shall be in substantial conformance with the following conditions, pursuant to Section 15.2-2303 of the CODE OF VIRGINIA (1950) as amended. These amended proffer conditions are the only conditions offered on this rezoning, and any prior conditions or <u>letters of clarification</u> applicable to the Property are hereby declared void and of no effect, provided that these proffers shall become effective only upon final approval of the Zoning Map Amendment application ZMAP 2004-0020 submitted by the Applicants. Proffer Amendment application ZCPA 2008-0011 (East Gate Three). In the event that the Board declines to approve both ZCPA 2008-0010 and 2008-0011, the previously approved proffers shall continue to govern

Attachment 5

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the development of the Property.

I. I.—**REZONING PLAT**

The Except to the extent that road improvements are undertaken by the Virginia Department of Transportation as described below in Proffer V.E.b., the development of the Property shall be in substantial conformance with Sheets 1, 5, 6, 7, 9 and 10 of the plan set entitled "East Gate One Zoning Map Amendment", dated November 22, 2004, with revisions through January 27, 2006, prepared by christopher consultants, ltd. and incorporated herein by reference as "Exhibit A. These" or "Rezoning Plat." The aforementioned sheets comprising Exhibit A are more specifically identified as: Sheet 1 - "Cover Sheet"; Sheet 5 - "Rezoning Plat (200 scale)"; Sheet 6 - "Rezoning Plat (100 scale)"; Sheet 7 - "Transportation Plan"; Sheet 9 - "School Site Location and Pedestrian Circulation Map"; and Sheet 10 – "Landscaping and Buffering Plan". These Except as otherwise provided, these drawings shall control the general development, layout and configuration of the Property, with the understanding that all requirements of the R-8 and R-16 zoning districts must be met and will take precedence over the Rezoning Plat. Development of the Property shall be allowed up to a maximum of 206 multi-family units and 193 single-family attached units, inclusive of ADU units. Construction of those road improvements to Route 50 that are to be made by VDOT, as described in Proffer V.F.b., shall not be the responsibility of the Owner.

II. WATER AND SEWER

The Property will be served by public water and sewer systems. All necessary extensions of existing water and sanitary sewer lines, and all connections, shall be provided to the Property at no expense to Loudoun County or the Loudoun County Sanitation Authority. Said water and sanitary sewer extensions and connections shall be in accordance with

Loudoun County Sanitation Authority standards and requirements. Any and all existing wells and drainfields on the Property will be abandoned in accordance with Health Department standards.

III. CAPITAL FACILITIES

A. <u>CONTRIBUTION</u>

The Applicants Owner will provide, at the time of issuance of each zoning permit for a residential unit on the Property, a one-time cash contribution in the amount of

\$4,966 per unit. Said contributions are to be used for capital improvement projects within the Dulles Community Planning Area, as the boundary of said planning area exists at date of these proffers as shown in the Revised General Plan. existed on the date of approval of ZMAP 2004-0020.

B. PUBLIC USE SITE

Applicants Owner shall dedicate to the County of Loudoun, when requested by the County, 10.9 acres of land for public use, provided that such request does not occur until after the right-of-way of Tall Cedars Parkway along the proposed public use site's frontage is dedicated. The location of such site shall be a portion of Parcel 47A, Tax Map 107, and as shown on Sheet 9. The Applicants Owner shall install, or ensure the installation of, all necessary utilities including sanitary sewer, water, gas, electric, telephone, and cable TV to the property lines of such site. The provision of these utilities will be concurrent with the construction of Tall Cedars Parkway, pursuant to phasing proffer V.C.2.dc.

It is the Applicants Owner's intent and desire that first priority for use of the subject site be an elementary school site primarily to serve the residential

communities in Loudoun County located east of the South Riding community. If the School Board determines that such site is not to be used for such purpose within 48 months of the opening to traffic of the portion of Tall Cedars Parkway that fronts the public use site, the site may be used by the County as it sees fit for any public purpose. However, the Applicants' Owner's preference for use in this case would be for athletic fields dedicated to youth sports.

The Applicants Owner will provide the School Board \$7,500 for an engineering feasibility study to determine the suitability of the site for elementary school use. Such payment shall be paid no earlier than 45 days after the approval of the rezoning ZMAP 2004-0020, and no longer than 30 days after written request for the funds is made to the Applicants Owner. If the County's chosen use of the subject site requires a Commission Permit, Rezoning Application and/or Special Exception Application, the Applicants Owner will provide the County and/or the School Board, as applicable, \$15,000 for costs associated with such land use applications. If no such land use applications are filed within 5 years of the approval of this rezoning, ZMAP 2004-0020, this proffer shall become null and void.

IV. FIRE AND RESCUE SERVICES

A. <u>EMERGENCY SERVICES</u>

At the time of issuance of each zoning permit, a one-time contribution of \$120.00 per unit for each residential unit shall be paid to the County for equal distribution by the County to the primary volunteer fire and rescue companies providing service to the Property. Contributions pursuant to this paragraph shall be divided equally between the primary servicing fire and rescue companies providing

service to the Property. Such contributions shall escalate on an annual basis in accord with the Consumer Price Index and with a base year of 1988.

Notwithstanding the foregoing, at such time as the primary fire and/or rescue service to the Property is no longer provided by an incorporated volunteer company, the obligation to make the contributions listed within this paragraph shall cease or be reduced in half if only one service is no longer provided by a volunteer company. The intent of these provisions is to support a volunteer fire and rescue system so long as a volunteer system is the primary provider of fire and rescue services to the Property.

B. SPRINKLER SYSTEMS

The Applicants Owner shall require all builders to provide as an option to purchasers of single-family attached units on the Property, the opportunity to purchase and have installed residential sprinkler systems for each said residence, provided that the water supply system to any such residence has sufficient capacity to support the sprinkler system. All sales information relating to house construction will prominently display and explain the benefits of sprinkler systems. Sales personnel for the residential units will be trained in the benefits of residential sprinkler systems. This proffer shall not require the builder to install such systems in any residence on the Property unless the purchasers of such residence choose to exercise this option prior to the start of construction and to pay costs associated with its purchase and installation.

C. <u>EMERGENCY VEHICLE ACCESS</u>

The Applicants Owner shall provide, no later than the framing stage of construction, all weather, compacted gravel access for emergency vehicles, acceptable to the Fire Marshal, to all portions of the Property under construction.

V. TRANSPORTATION

A. <u>INTERNAL ROAD NETWORK</u>

All roads and alleys on the Property will be constructed in accordance with Loudoun County's Land Subdivision and Development Ordinance and Facilities

Standards Manual to provide access to the internal parcels as they are developed.

Where roads are to be built as public roads on the Property, they will be designed and constructed in accordance with the Virginia Department of Transportation

("VDOT") and County standards, or with modified standards as may be approved by VDOT and the County.

The Rezoning Plat shows future East Gate Drive as providing for interparcel access. The Applicants Owner shall provide a notice in all sales documents for lots located on this referenced interparcel access road, that such lots are located on a roadway that is planned to be converted to a through street in the future.

B. RIGHT-OF-WAY DEDICATION

 for all planned public roadways within the Property. The Applicants Owner shall dedicate right-of-way and, as provided in this proffer, easements concurrent with or prior to approval of the Record Plat for that portion of the Property which includes or abuts the affected roadways. If requested to do so by the County, the Applicants Owner shall dedicate the rights-of-way, and adjoining easements, described in this proffer, in advance of the time stated above at no cost to the County. The Applicants Owner will be granted a reasonable time to review any and all construction plans and plats upon which the requested dedications are based, prior to executing the Deed(s) of Dedication.

The Applicants Owner shall dedicate any and all necessary land such that there is a minimum of 64 feet of dedicated right-of-way for East Gate Drive from that road's intersection with Pleasant Valley Road to that road's intersection with Tall Cedars Parkway, and 120 feet of dedicated right-of-way for Tall Cedars Parkway from that road's intersection with East Gate Drive to its intersection with Edgewater Street. Such dedication will be on an alignment substantially in accordance with that shown for East Gate Drive on Sheet 7, "Transportation Plan", in an ultimate U4 configuration for East Gate Drive and an ultimate U6M for Tall Cedars Parkway. The dedication of the off-site portions of the listed dedications shall be subject to the provisions of proffer V.D.

C. <u>REGIONAL ROAD IMPROVEMENTS</u>

 In accordance with the phasing outlined below, the <u>ApplicantsOwner</u> shall design, bond, and construct the <u>following</u> regional road improvements <u>identified herein</u>.

a. Third-Lane, Route 50-Westbound

Construct a third westbound lane on Route 50 from the

Loudoun/Fairfax County line west to the proposed intersection of

Route 50 and Tall Cedars Parkway, being a distance of

approximately 3,500 LF.

b. Route 50/Pleasant Valley Road

Construct a second westbound Route 50 to southbound Pleasant

Valley Road left turn lane, dedicated right turn lane and right turn

acceleration lane; signal adjustments.

<u>a.</u> <u>e.</u>—Pleasant Valley Road

The widening of Pleasant Valley Road from its intersection with the southern right-of-way boundary along Route 50 to the proposed Pleasant Valley / East Gate Drive intersection to a four lane undivided urban (U4) roadway with turn lanes as required. South of this intersection construct a second southbound lane to the existing turn lane at this road's intersection with Middlesex Drive, with curb and gutter.

<u>b.</u> <u>d.</u> East Gate Drive

Construct a U4 section from Pleasant Valley Road to this road's intersection with Tall Cedars Parkway. ApplicantsOwner shall construct one VDOT commercial entrance each to serve Parcels 48, 49A and B (combined), 50 and 52 on Loudoun County Tax Map 107, if the ownersOwner of each parcel desire such entrance to be constructed. Such entrances shall be constructed at a location mutually agreeable to the ApplicantsOwner and each parcel owner,

and dependent on each property owner granting all necessary easements to construct such entrances.

- e. Tall Cedars Parkway
 Design Tall Cedars Parkway to a U6M standard and construct Tall
 Cedars Parkway to a U4M standard from Tall Cedars Parkway
 intersection with East Gate Drive to its intersection with Edgewater
 Street.
- d. f. Route 50/Tall Cedars Parkway Traffic Signal
 Construct traffic signal at the proposed intersection of Route 50
 and Tall Cedars Parkway upon VDOT approval of the traffic signal
 warrant study.

2. Phasing

- a. Prior to the approval of the first record plat or site plan, whichever is first in time, containing residential lots on the Property, the regional road improvements as listed in Proffer V.C.1.a., V.C.1.b. and V.C.1.e., above, must be designed, approved and bonded. These improvements will and shall be constructed and open to traffic, and the cash equivalent contribution pursuant to Proffer V.E.b. below shall have been made, prior to the issuance of the first occupancy permit for any residential units on the Property. As used in these proffers, the term "open to traffic" does not necessarily mean accepted into the VDOT system for maintenance.
- <u>b.</u> Prior to the approval of each record plat or site plan, whichever is first in time, for any portion of the Property that abuts the roadway

outlined in V.C.1.db., the portion of such roadway abutting the portion of the Property that is the subject of the record plat or site plan, as applicable, will be designed, approved and bonded. These improvements will be constructed and open to traffic prior to the issuance of the first occupancy permit for any residential unit in the portion of the Property covered by the subject record plat or site plan, as applicable. For the purposes of these Proffers, the term "open to traffic" does not necessarily mean accepted into the VDOT system for maintenance.

- e. Prior to the issuance of the 225th residential zoning permit on the

 Property, the portion of regional road improvement as listed in

 V.C.1.d. that is on Parcel 47, Tax Map 107, will be designed,

 approved and bonded. This improvement will be constructed and

 open to traffic prior to the issuance of the 300th residential zoning

 permit on the Property.
- <u>c.</u> d.-Prior to the issuance of the zoning permit for the 225th residential unit on the Property, the <u>ApplicantsOwner</u> will design and bond for construction the portion of the regional improvement as listed in V.C.1.ec., i.e. Tall Cedars Parkway from East Gate Drive to Edgewater Street, that is on Parcels 47 and 47A, Tax Map 107. This improvement shall be constructed and opened to traffic at the earlier of the two following occurrences; prior to the issuance of the 300th zoning permit on the Property or, if Tall Cedars Parkway has been constructed north of East Gate Drive as a continuous roadway all the

- way to Route 50, then to coincide with the opening of that portion of Tall Cedars Parkway to traffic.
- d. e. The Applicants Owner shall submit construction plans and a traffic warrant study for the traffic signal for the Route 50/Tall Cedars Parkway intersection proffered at V.C.1.<u>fd</u>. prior to the issuance of the 100th zoning permit on the Property. Bonding of the traffic signal will occur no later than the issuance of the 200th zoning permit on the Property. However, if the County and VDOT approve construction plans for the Route 50/Tall Cedars Parkway intersection earlier than the 100th zoning permit, the Applicants Owner will submit the warrant study and construction plans within 45 days of such approval. If the traffic warrant study is approved by VDOT, the traffic signal will be installed within six (6) months of said approval. If by the issuance of the 375th zoning permit in the project, VDOT has not approved the traffic signal warrant study, the Applicants Owner will submit a cash contribution in lieu of installing the traffic signal. The value of said contribution shall be established in accordance with paragraph V.E. of this Proffer Statementas set forth in Proffer V.E.c., below.
- e. As used in these proffers, the term "open to traffic" shall mean that the improvements are open to the public for use, but have not yet been accepted into the VDOT system for maintenance.

D. OFFSITE RIGHT-OF-WAY

In addition to dedicating right-of-way and easements on-site, the

ApplicantsOwner shall make good faith efforts to acquire off-site right-of-way or

easements necessary for the construction of the road improvements proffered herein. Where right-of-way and/or easements necessary for construction of proffered improvements cannot be obtained, despite such good faith efforts, either (i) voluntarily through donation or proffer to the County, or (ii) through purchase by the ApplicantsOwner at a good faith reasonable price, the ApplicantsOwner shall request that the County acquire such right-of-way and/or easements by appropriate eminent domain proceedings by the County, with all costs associated with the eminent domain proceedings to be borne by the ApplicantsOwner, including but not limited to land acquisition costs. The initiation of such eminent domain proceedings is solely within the discretion of the County.

If the necessary right-of-way and/or easements cannot be acquired voluntarily and the County chooses not to exercise its right of eminent domain, the ApplicantsOwner shall be released from the obligation to acquire such right-of-way. If the County elects to defer its exercise of eminent domain, then the Applicants'Owner's proffer requiring such acquisition or construction shall likewise be deferred. It is understood that the County will, in its discretion, seek said right-of-way and off-site improvements from other landowners as development occurs.

E. <u>CASH EQUIVALENT CONTRIBUTION</u>

a. Unless otherwise provided in these proffers, or unless the Owner has
entered into a legal agreement to reimburse a third party for the design,
construction, and/or bonding of any of these improvements, the Owner
shall contribute to the County, or its designee, an amount equal to the
cost of constructing the transportation improvements described above

- in proffers V.C.1.a. through V.C.1.d, in lieu of actual construction, if said improvements have been constructed or bonded by others prior to bonding for construction by the Owner.
- b. Notwithstanding anything in these Proffers to the contrary, VDOT has elected to construct certain improvements to Route 50, as identified below, in such a manner as to obviate any requirement the Owner may have had to construct certain regional road improvements heretofore proffered in ZMAP 2004-0020. The Owner shall not be responsible for the construction of the following specified improvements, but shall contribute to the County, or its designee, the sum of \$1,198,290.00 for the cost of constructing the transportation improvements described below, in lieu of actual construction of these improvements, such payment to be made prior to the issuance of the first zoning permit in either East Gate 1 (ZCPA 2008-0010), or East Gate 3 (ZCPA-2008-0011):
 - 1. Third Lane, Route 50 Westbound: A third westbound lane on Route 50 from the Loudoun/Fairfax County line west to the proposed intersection of Route 50 and Tall Cedars Parkway, being a distance of approximately 3,500 LF, such construction to tie into the construction proffered by ZCPA 2008-0011.
 - 2. Route 50/Pleasant Valley Road: A second westbound Route 50 to southbound Pleasant Valley Road left turn lane, dedicated right turn lane and right turn acceleration lane; signal adjustments.
- c. Unless otherwise provided in these proffers, or unless the Applicants

 have entered into a legal agreement to reimburse a third party for the

 design, construction, and/or bonding of any of these improvements, the

Applicants agree to contribute to the County or its designee an amount equal to the cost of constructing the transportation improvements described above in proffers V.C.1.a. through V.C.1.f, in lieu of actual construction, if said improvements have been constructed or bonded by others prior to bonding for construction by the Applicants. For Except for the contribution set forth in subsection (b), above, for the purposes of determining the in-lieu-of contribution as set forth in these Proffers, construction costs shall be deemed to include all engineering, surveying, bonding, permit fees, utility relocation, and other hard costs of construction based upon County bonding estimates for said construction per the FSM. Such contribution in lieu of actual construction shall occur at the time the Applicants would otherwise have been required by these proffers to bond or construct such improvements. As determined by the County, such any in-lieu contribution shall either be used to reimburse the party who constructed such improvements or for regional roadway and transit improvements in the vicinity of, and that benefit, the Property.

F. TRANSIT

1. The Applicants Owner shall provide, at the time of issuance of zoning permit for each residential unit, a one-time cash contribution in the amount of \$500 per residential unit, to be used at the County's discretion for public transportation services and/or regional road improvements within the Dulles Community Planning Area. The Applicants Owner will cooperate with adjacent developments and attempt to provide and enhance a transit

system in the area.

The Applicants Owner shall provide, at the location shown on Sheet 5, a
bus stop meeting Loudoun County standards. Such bus stop to be
provided concurrent with the road construction outlined in paragraph
V.C.2.ea.

G. <u>CONSTRUCTION TRAFFIC</u>

Contractors will be instructed in their contracts to make every effort to combine trips and coordinate same to minimize and control construction traffic. In order to avoid conflicts with school bus traffic, the <u>ApplicantsOwner</u> shall include in all sales contracts with homebuilders, and in all construction contracts, a provision requiring that contractors shall not use Pleasant Valley Road, Rt. 609, south of that road's intersection with the future East Gate Drive, during the school year before 8:30 a.m., between 2:30 and 3:30 p.m., or after 5:30 p.m.

The Applicants Owner will contact the Loudoun County School Board prior to the start of each school year and adjust these hours as necessary to coincide with changes to the hours of the school day, as determined by the School Board.

VI. OPEN SPACE, RECREATION AREAS, SIDEWALKS, LANDSCAPING AND TREE SAVE AREAS

A. Active recreation areas will be provided within the Property in accordance with Sections 7-803(E) and 7-903(E) of the Zoning Ordinance, and as defined in Article 8 of that Ordinance. Active recreational facilities will include but not be limited to one tot lot, one playground, one multipurpose court approximately 3,100 square feet in size and two picnic areas. In addition, an outdoor swimming

pool approximately 2,700 square feet in size and bathhouse with an approximately 800 square foot meeting room shall be constructed at the location shown on the Rezoning Plat. Such facilities will be constructed concurrent with the development of lots which abut the various recreation areas. However, the pool and bathhouse with meeting room will be constructed and available for use prior to the issuance of the 275th occupancy permit in the project.

B. <u>SIDEWALKS</u>

The Applicants Owner will construct 5' wide concrete sidewalk along the south side of East Gate Drive from that road's intersection with Tall Cedars Parkway to Pleasant Valley Road and along the west side of Pleasant Valley Road from that road's intersection with East Gate Drive to that road's intersection with Middlesex Drive, in substantial accordance with the alignment shown on Sheet 9 – "School Site Location and Pedestrian Circulation Map". Such sidewalk will be constructed or bonded for construction prior to the approval of record plats for lots abutting the area containing such sidewalk, or with the bonding at construction plans for offsite road improvements in accordance with phasing as outlined in proffer V.C.2. Such sidewalk may be in easements on lots or parcels abutting the East Gate Drive and Pleasant Valley Road right-of-way. Where such sidewalk is outside dedicated public right-of-way, it shall be maintained by the HOA. All internal private streets shall have 4' wide concrete sidewalks on both sides of the street.

C. OPEN SPACE EASEMENTS

With the issuance of each residential zoning permit, the <u>ApplicantsOwner</u> will make a cash contribution of \$137.00 per unit. Such cash contributions are to be

used by Loudoun County for the purchase of open space easements and/or the purchase and development of County parkland within the boundaries of the Dulles Community Planning Area.

D. <u>LANDSCAPING AND BUFFERING</u>

- 1. Along the Property's southern boundary, the Applicants Owner will provide a 110' building setback. Within the 75' of this setback closest to the Property's southern boundary, the Applicants Owner will provide landscape planting so as to meet 150% of the required planting of a Type IV rear yard buffer and as shown on Sheet 10, "Landscape and Buffering Plan". Within this area, the Applicants Owner will also provide aan 8' high brick pillared wrought iron style picket fence within 5' of the boundary line and a meandering type berm with a minimum height of 4' measured from the original ground elevation at the Property's southern boundary. The 50 feet of setback closest to the Property's southern boundary will not be maintained as a manicured landscaped area, but will be allowed to mature to a natural forested area. This stipulation will be included in the HOA documents. Such berming and landscaping, but not the fence, may have breaks of up to 25' along the boundary line in width where necessary underground utilities preclude providing same. Required storm water management/BMP ponds may encroach in this setback area. in which case the 75' width of the landscape buffer can be reduced to no less than 25' with the same density of planting. No active recreation facilities will be placed within the 75 foot buffered area.
- 2. The Applicants agree Owner agrees to provide and install plant materials

equivalent to 150% of the evergreen, canopy and understory trees of a Type IV Rear Yard Buffer in the rear yards of Parcels 173 to 180 and Parcel E1, Tax Map 107A((1)). The Applicants Owner will meet with each property owner to determine the exact type and placement of plant materials. Subject to the individual property owner approval, the plant materials will be installed during the first planting season after the final approval of this rezoning. Property owners may defer these plantings for up to 24 months from the time of final approval of this rezoning application. At a property owner's option, some or all of the plant materials may be placed within the Ridings at Blue Spring HOA's open space parcel immediately adjoining their property, subject to HOA approval or in the required setback on Parcel 47, Tax Map 107. If the latter option is chosen, such plantings will not occur until active development on that parcel has been completed.

- 3. It is anticipated that there will be two stormwater management/BMP ponds within the project at the locations shown on Sheet 6 "Rezoning Plat (100 scale)". The ApplicantsOwner will landscape any edges of these facilities which are not part of the dam embankment for the facilities with the plantings meeting the requirements of a Type One rear yard buffer. The ApplicantsOwner will place two-6' long benches within each landscaped area. A 4' asphalt trail will connect each bench to the on-site pedestrian sidewalk system.
- Applicants Owner will donate \$100,000 to the Ridings at Blue Spring
 HOA. Such funds will be used by that group for the design and

installation of landscaping and hard scape features around the stormwater management pond on Parcel K, Tax Map 107((A-1)). Such donation to be made within 30 days of the date that control of this HOA is turned over to the homeowners from the developer of that project or within 2 years of the approval of this rezoning, whichever comes first. The ApplicantsOwner will provide the Zoning Administrator with a copy of a canceled check showing this proffer has been fulfilled.

E. TREE SAVE AREAS

Within the area identified on the Rezoning Plat as "Tree Save" area, the Applicants Owner shall preserve healthy trees provided, however, that trees may be removed to the extent necessary for the construction of trails and Stormwater Management Facilities that are illustrated on the Rezoning Plat and as lying within such Tree Save area and for the construction of utilities necessary for development of the Property. Applicants Owner shall minimize any such disturbance.

The boundaries of the "Tree Save" area depicted on the Rezoning Plat shall be delineated on the record plat recorded for the development. A Tree Conservation Easement in form approved by the County Attorney shall be recorded for the "Tree Save" area, with such easement to be recorded concurrently with the record plat recorded for the property containing such "Tree Save" area.

If, during construction on the Property and prior to bond release, it is determined by the Applicants Owner's certified arborist and/or the County that any healthy tree located within the boundaries of the Tree Save area described in this proffer has been damaged during construction and will not survive, then the

Applicants Owner shall remove each such tree and replace each such tree with two (2) 2 ½ - 3 inch caliper native, non-invasive deciduous trees. The placement of the replacement trees shall be proximate to the area of each such damaged tree so removed, or in another area as requested by the County.

VII. ARCHITECTURAL TREATMENT

All unit and building facades, which are visible from existing or planned public roadways or which face south, without any other intervening structures between them and the Property's southern boundary, will only use the following materials on these elevations; brick or brick veneer; stone or stone veneer; or fiber cement siding, i.e. Hardiplank or equivalent, or similar type siding materials; or some combination of these materials. No vinyl or aluminum siding materials will be allowed on these elevations.

For single family attached units fronting on public roads, the front elevations for these units will be varied in terms of architectural elements and finish types, such that no two adjoining units have the same exact elevations.

VIII. NATIONAL WILDLIFE FEDERATION PROGRAM

The Applicants Owner will display information regarding the National Wildlife
Federation's Backyard Wildlife Habitat Program (the "Program") in its sales office. The
Applicants Owner will provide to all homebuyers, at the time of settlement, information
packages for the Program and will encourage their participation in the Program.

IX. LINKAGE OF RESIDENTIAL TO NON-RESIDENTIAL DEVELOPMENT

In order to ensure that the mixed use nature of the Business Community and that the Community remains fiscally positive at all times during build-out and achieves a qualitative appearance of a mixed use community, the <u>ApplicantsOwner</u> shall not be permitted to obtain zoning permits for more than 330 residential dwelling units, in

combination with such permits issued on ZMAP 2005-0003ZCPA 2008-0011, on the Property unless and until zoning permits have been issued for office, retail, or office/retail commercial development on Parcels 46, 47 and 47A, Tax Map 107, comprising a combined total of a minimum of 77,000 square feet of such uses, excluding any civic uses. A minimum of 22,000 square feet of the 77,000 square feet of commercial development shall be office use.

X. HOMEOWNER'S ASSOCIATION

Documents to establish a Homeowner's Association ("HOA") on the Property will be submitted to the County for review and approval as to form and consistency with these proffers prior to the first record subdivision plat approval or site plan approval, whichever is first in time, for residential development on the Property. The HOA shall have among its duties trash removal, maintenance of all private roads, storm drainage, storm water management, best management practice facilities, required vegetative buffers, and common areas, including open space, trails, sidewalks, and play areas on the Property. The HOA documents will ensure that existing vegetation in the "Tree Save" area as shown on the Rezoning Plat are not removed or destroyed. This preservation will include understory and scrub growth except in active recreation areas, utility corridors, and stormwater management/BMP facilities. Such HOA shall be established prior to approval of the first record plat for the Property. Additionally, because garages are used to meet a portion of the required minimum parking requirements, a covenant preventing the garages from being converted to living space, or to any other use that would prevent the garage from being used for parking, shall be included in the HOA documents.

XI. CASH CONTRIBUTION ESCALATION

Unless otherwise provided, any and all cash contributions designated in this proffer statement shall escalate on a yearly basis from the base year of 2006 and change effective each January 1 thereafter based on the Consumer Price Index published by the Bureau of Labor Statistics, Unites States Department of Labor for the Washington-Baltimore, MD-VA-DC-WV Consolidated Metropolitan Statistical Area. If this Index should cease to be published, then the contributions will escalate in accord with another equivalent Index mutually agreed upon by the Applicants and the County. Owner and the County.

Notwithstanding any other provisions of these Proffers, the cash equivalent contribution required by Proffer V.E.b. shall escalate on a yearly basis from the base year of 2009.

EQUINOX INVESTMENTS, LLC EAST GATE THREE ZONING CONCEPT PLAN AMENDMENT PROFFER STATEMENT

ZMAP 2005-0003

OCTOBER 31, 2005 (REVISED FEBRUARY 13, 2006)

ZCPA 2008-0011

March 31, 2009

EG Development, LLC, as successor in interest to Valley Vista Associates, LLC, (hereinafter referred to as "Owner"), the Owner of the property described as Parcel B, Loudoun County Tax Map 102 ((5)) (MCPI# 128-49-6066) and Equinox Investments, LLC, the Applicant (hereinafter referred to jointly as the "Applicants")(the "Property"), on behalf of themselvesitself and theirits successors in interest, hereby voluntarily proffer that in the event that the above referenced Parcel B (the "Property") is rezoned by the Loudoun County Board of Supervisors (herein after referred to as "the County") to R-16 Townhouse/Multifamily Residential ("R-16") proffers that, as substantially set forth in the Rezoning Plat dated November 22, 2004, with revisions through February 13, 2006, and further described in its application as approved by ZMAP 2005-0003. which rezoned the Property to the R-16 District, the development of the Property shall be in substantial conformance with the following conditions, pursuant to Section 15.2-2303 of the CODE OF VIRGINIA (1950) as amended. These amended proffer conditions are the only conditions offered on this rezoning, and any prior conditions or letters of clarification applicable to the Property are hereby declared void and of no effect-provided that these. These proffers shall become effective only upon final approval of thethis Zoning Map Amendment application ZMAP 2005-0003 submitted by the Applicants. Concept Plan Amendment application ZCPA 2008-0010 (East Gate One) and of ZCPA 2008-0011 (East Gate Three). In the event that the Board declines to approve both ZCPA 2008-0010 and 2008-0011, the previously approved proffers shall continue to govern the development of the Property.

Attachment 5

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I. I.—REZONING PLAT

The Except to the extent that road improvements are undertaken by the Virginia Department of Transportation as further described below in Proffer V.F.b., the development of the Property shall be in substantial conformance with Sheets 1, 5, 6, 7, 8, 9 and 10 of the plan set entitled "East Gate Three Zoning Map Amendment", dated November 22, 2004, with revisions through February 13, 2006, prepared by christopher consultants, ltd. and incorporated herein by reference as "Exhibit A. These" or "Rezoning Plat." The aforementioned sheets comprising Exhibit A are more specifically identified as: Sheet 1 - "Cover Sheet; Sheet 5 - "Rezoning Plat (200 Scale)"; Sheet 6 -"Rezoning Plat (100 Scale)"; Sheet 7 – "Transportation Plan"; Sheet 8 – "Zoning Plan"; Sheet 9 – "Pedestrian Circulation Plan"; and Sheet 10 – "Landscaping and Buffering Plan". These Except as otherwise provided, these drawings shall control the general development, layout and configuration of the Property, with the understanding that all requirements of the R-16 zoning district must be met and will take precedence over the Rezoning Plat. Development of the Property shall be allowed up to a maximum of 222 multi-family units, inclusive of Affordable Dwelling Units (ADUs). Construction of those road improvements to Route 50 that are to be made by VDOT, as described in Proffer V.E.b, shall not be the responsibility of the Owner.

II. WATER AND SEWER

The Property will be served by public water and sewer systems. All necessary extensions of existing water and sanitary sewer lines, and all connections, shall be provided to the Property at no expense to Loudoun County or the Loudoun County Sanitation Authority. Said water and sanitary sewer extensions and connections shall be in accordance with Loudoun County Sanitation Authority standards and requirements. Any and all existing

wells and drainfields on the Property will be abandoned in accordance with Health Department standards.

III. CAPITAL FACILITIES

A. <u>CASH CONTRIBUTION</u>

The Applicants Owner will provide, at the time of issuance of each zoning permit for a residential unit on the Property, a one-time cash contribution in the amount of \$2,643 per unit. Said contributions are to be used for capital improvement projects within the Dulles Community Planning Area, as the boundary of said planning area exists at date of these proffers as shown in the Revised General Plan. existed on the date of approval of ZMAP 2005-0003.

B. PUBLIC USE SITE

Applicants Owner shall dedicate to the County of Loudoun, when requested by the County, 5.4 acres of land for public use, provided that such request does not occur until after the right-of-way of Tall Cedars Parkway along the proposed public use site's frontage is dedicated. The location of such site shall be a portion of Parcel 47A, Tax Map 107, and as shown on Sheet 9. The Applicants Owner shall install, or ensure the installation of, all necessary utilities including sanitary sewer, water, gas, electric, telephone, and cable TV to the property lines of such site. The provision of these utilities will be concurrent with the construction of Tall Cedars Parkway.

It is the Applicants Owner's intent and desire that first priority for use of the subject site be an elementary school site primarily to serve the residential communities in Loudoun County located east of the South Riding community. If the School Board determines that such site is not to be used for such purpose

within 48 months of the opening to traffic of the portion of Tall Cedars Parkway that fronts the public use site, the site may be used by the County as it sees fit for any public purpose. However, the Applicants' Owner's preference for use in this case would be for athletic fields dedicated to youth sports.

The ApplicantsOwner will provide the School Board \$7,500 for an engineering feasibility study to determine the suitability of the site for elementary school use. Such payment shall be paid no earlier than 45 days after the approval of the rezoningZMAP 2005-0003 and no later than 30 days after written request for the funds is made to the ApplicantsOwner. If the County's chosen use of the subject site requires a Commission Permit, Rezoning Application and/or Special Exception Application, the ApplicantsOwner will provide the County and/or the School Board, as applicable, \$15,000 for costs associated with such land use applications. If no such land use applications are applied for within 5 years of the approval of this rezoning, ZMAP 2005-0003, this proffer shall become null and void.

IV. FIRE AND RESCUE SERVICES

A. EMERGENCY SERVICES

At the time of issuance of each zoning permit, a one-time contribution of \$120.00 per unit for each residential unit shall be paid to the County for equal distribution by the County to the primary volunteer fire and rescue companies providing service to the Property. Contributions pursuant to this paragraph shall be divided equally between the primary servicing fire and rescue companies providing service to the Property. Such contributions shall escalate on an annual basis in

accord with the Consumer Price Index and with a base year of 1988.

Notwithstanding the foregoing, at such time as the primary fire and/or rescue service to the Property is no longer provided by an incorporated volunteer company, the obligation to make the contributions listed within this paragraph shall cease or be reduced in half if only one service is no longer provided by a volunteer company with the contribution to be provided to the remaining volunteer company. The intent of these provisions is to support a volunteer fire and rescue system so long as a volunteer system is the primary provider of fire and rescue services to the Property.

B. <u>EMERGENCY VEHICLE ACCESS</u>

The Applicants Owner shall provide, no later than the framing stage of construction, all weather, compacted gravel access for emergency vehicles, acceptable to the Fire Marshal, to all portions of the Property under construction.

V. TRANSPORTATION

A. INTERNAL ROAD NETWORK

All roads on the Property will be constructed in accordance with Loudoun County's Land Subdivision and Development Ordinance and Facilities Standards

Manual to provide access to the internal parcels as they are developed. Where roads are to be built as public roads on the Property, they will be designed and constructed in accordance with the Virginia Department of Transportation ("VDOT") and County standards, or with modified standards as may be approved by VDOT and the County.

The Rezoning Plat shows future Defender Drive, a public roadway, as providing for future interparcel access. The ApplicantsOwner shall provide a

notice in all sales documents for units located within the project, that such units are located adjoining a roadway that is planned to be converted to a through street in the future.

B. <u>RIGHT-OF-WAY DEDICATION</u>

The dedications described in this proffer shall be provided by the ApplicantsOwner as part of the development of the Property. Dedication of land includes related easements outside the right-of-way, including, but not limited to, slope maintenance, storm drainage, or utility relocation easements necessary to construct improvements to the public roads along the frontage of the Property and for all planned public roadways within the Property. The ApplicantsOwner shall dedicate right-of-way and, as provided in this proffer, easements concurrent with or prior to approval of Site Plans or Record Plats, whichever is first in time, for that portion of the Property which includes or abuts the affected roadways. If requested to do so by the County, the ApplicantsOwner shall dedicate the rights-of-way, and adjoining easements, described in this proffer, in advance of the time stated above at no cost to the County. The ApplicantsOwner will be granted a reasonable time to review any and all construction plans and plats upon which the requested dedications are based, prior to executing the Deed(s) of Dedication.

C. <u>REGIONAL ROAD IMPROVEMENTS</u>

- 1. In accordance with the phasing outlined below, the Applicants Owner shall design, bond, and construct, the following regional road improvements: identified herein.
 - a. Third Lane, Route 50 Westbound

Construct a third westbound lane on Route 50 from the Poland

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Road intersection east to the proposed intersection of Route 50 and

Tall Cedars Parkway and being a distance of approximately 3,700

ft. Such construction to tie into the construction proffered by

ZMAP 2004-0020.

- <u>a.</u> b. Tall Cedars Parkway/Edgewater Street Traffic Signal.
 Construct traffic signal with pedestrian actuated controls at the proposed intersection of Tall Cedars Parkway and Edgewater Street.
- <u>b.</u> e.-Tall Cedars Parkway/East Gate Drive Traffic Signal.
 Construct traffic signal with pedestrian actuated controls at the
 proposed intersection of Tall Cedars Parkway and East Gate Drive.
- d.-Defender Drive_Prior to or concurrent with approval of the first record plat or site plan, whichever occurs first in time, on the Property, the ApplicantsOwner shall record a Deed of Reservation in favor of the County for a period of 20 years a 64' right of way for the extension of Defender Drive through the Property, on an alignment substantially in accordance with that shown on the Rezoning Plat. The Applicants agreeOwner agrees to dedicate this right of way, along with any needed construction easements, immediately upon request by Loudoun County or VDOT and at no cost to them.

2. Phasing

a. Prior to the approval of first record plat or site plan on the Property,
whichever is first in time, the regional road improvement listed in

V.C.1.a. will be designed, approved and bonded. These improvements will be constructed and open to traffic prior to the issuance of the first occupancy permit for any residential units on the parcel. As used in these proffers, the term "opened to traffic" does not necessarily mean accepted into the VDOT system for maintenance.

<u>a.</u> b. The Applicants Owner shall submit construction plans and traffic warrant studies for the traffic signals proffered at V.C.1.ba. and eb. prior to the issuance of the 100th zoning permit on the Property. Approval and bonding of the traffic signals' construction plans will be diligently pursued, and bonding will occur no later than the issuance of the 150th zoning permit on the Property. However, if the County and VDOT approve construction plans for either intersection earlier than the 100th zoning permit, the ApplicantsOwner will submit the appropriate warrant study and construction plan within 45 days of such approval or prior to the 100th zoning permit, whichever comes sooner. The Applicants Owner will immediately, upon approval of the traffic signal construction plans, submit and diligently pursue the approval of the traffic signal bonding. If the traffic warrant studies are approved by VDOT, the traffic signals will be installed within six (6) months of said approval. If by the issuance of the 200th zoning permit in the project, VDOT has not approved either or any of the traffic signal warrant studies, the ApplicantsOwner will submit a cash contribution in lieu of installing the traffic signal(s). The value of said contribution to be established in accordance with paragraph V.F. of this Proffer

Statement.

D. VALLEY VISTA LANE

Valley Vista Lane is a private roadway that abuts this Property to the south. The Applicants Owner shall not have any vehicular access to this roadway. Regardless, the Applicants Owner shall resurface Valley Vista Lane with "bituminous asphalt surfacing" of at least 1 ½ inches for the full width of the current travel lanes. In addition, the Applicants Owner will prepare and submit to Loudoun County concurrent with the first site plan or record plat, whichever is comes first, a study of the existing drainage problems in this area. The Applicants Owner will propose any identified solutions to correct some or all of these drainage problems. If approved by the County, and if all necessary easements are provided by affected property owners. Applicants Owner will implement corrective actions. All approved work, including the resurfacing of Valley Vista Lane will be completed prior to the issuance of the 50th zoning permit. The limits of the study area and corrective action will be in the front and rear yards of the lots fronting Valley Vista Lane, from Poland Road to the western boundary of Lot 17, Tax Map 102A((2)).

E. OFFSITE RIGHT-OF-WAY

In addition to dedicating right-of-way and easements on-site, the

Applicants Owner shall make good faith efforts to acquire off-site right-of-way or
easements necessary for the construction of the road improvements proffered
herein. Where right-of-way and/or easements necessary for construction of
proffered improvements cannot be obtained, despite such good faith efforts, either

(i) voluntarily through donation or proffer to the County, or (ii) through purchase

by the Applicants Owner at a good faith reasonable price, the Applicants Owner shall request that the County acquire such right-of-way and/or easements by appropriate eminent domain proceedings by the County, with all costs associated with the eminent domain proceedings to be borne by the Applicants Owner, including but not limited to land acquisition costs. The initiation of such eminent domain proceedings is solely within the discretion of the County.

If the necessary right-of-way and/or easements cannot be acquired voluntarily and the County chooses not to exercise its right of eminent domain, the ApplicantsOwner shall be released from the obligation to acquire such right-of-way. If the County elects to defer its exercise of eminent domain, then the ApplicantsOwner's proffer requiring such acquisition or construction shall likewise be deferred. It is understood that the County will, in its discretion, seek said right-of-way and off-site improvements from other landowners as development occurs.

F. CASH EQUIVALENT CONTRIBUTION

- a. Unless otherwise provided in these proffers, or unless the Owner has entered into a legal agreement to reimburse a third party for the design, construction, and/or bonding of any of these improvements, the Owner shall contribute to the County, or its designee, an amount equal to the cost of constructing the transportation improvements described above in proffers V.C.1.a. and V.C.1.b. in lieu of actual construction, if said improvements have been constructed or bonded by others prior to bonding for construction by the Owner.
- b. Notwithstanding anything in these Proffers to the contrary, VDOT has

elected to construct certain improvements to Route 50, as identified below, in such a manner as to obviate any requirement the Owner may have had to construct regional road improvements heretofore proffered in ZMAP 2005-0003. The Owner shall not be responsible for the construction of the following specified improvements, but shall contribute to the County or its designee the sum of \$775,710.00 for the cost of constructing the following transportation improvements described below in lieu of actual construction of these improvements, such payment to be made prior to the issuance of the first zoning permit in either East Gate 1 (ZCPA 2008-0010), or East Gate 3 (ZCPA-2008-0011):

- 1. Construct a third westbound lane on Route 50 from the Poland Road intersection east to the proposed intersection of Route 50 and Tall Cedars Parkway and being a distance of approximately 3,700 ft. Such construction to tie into the construction proffered by ZCPA 2008-0010.
- <u>C.</u> Unless otherwise provided in these proffers, or unless the Applicants have entered into a legal agreement to reimburse a third party for the design, construction, and/or bonding of any of these improvements, the Applicants shall contribute to the County or its designee an amount equal to the cost of constructing the transportation improvements described above in proffers V.C.1.a., V.C.1.b., and V.C.1.c. in lieu of actual construction, if said improvements have been constructed or bonded by others prior to bonding for construction by the Applicants.
 For Except for the contribution set forth in Proffer V.F.b., above, for

the purposes of determining the in-lieu-of eontributions as set forth in these Proffers, construction costs shall be deemed to include all engineering, surveying, bonding, permit fees, utility relocation, and other hard costs of construction based upon County bonding estimates for said construction per the FSM. Such contribution in lieu of actual construction shall occur at the time the ApplicantsOwner would otherwise have been required by these Proffers to bond or construct such improvements. As determined by the County, suchany in-lieu contribution shall either be used to reimburse the party who constructed such improvements or for regional roadway and transit improvements in the vicinity of, and that benefit, the Property.

G. <u>CASH CONTRIBUTIONS FOR TRANSIT FUND</u>

The Applicants Owner shall provide, at the time of issuance of zoning permit for each residential unit, a one-time cash contribution in the amount of \$500 per residential unit, to be used at the County's discretion for public transportation services and/or regional road improvements within the Dulles Community Planning Area.

H. <u>CONSTRUCTION TRAFFIC</u>

Contractors will be instructed in their contracts to make every effort to combine trips and coordinate same to minimize and control construction traffic. In order to avoid conflicts with school bus traffic, the <u>ApplicantsOwner</u> shall include in all sales contracts with homebuilders, and in all construction contracts, a provision requiring that contractors shall not use Poland Road, Rt. 742, south of the

Property's entrance, during the school year before 8:30 a.m., between 2:30 and 3:30 p.m., or after 5:30 p.m.

The Applicants Owner will contact the Loudoun County School Board prior to the start of each school year and adjust these hours as necessary to coincide with changes to the hours of the school day, as determined by the School Board.

VI. OPEN SPACE, RECREATION AREAS, SIDEWALKS, LANDSCAPING AND TREE SAVE AREAS

A. ACTIVE RECREATION AREAS

Active recreation areas will be provided within the Property in accordance with Sections 7-903((E)) of the Zoning Ordinance, and as defined in Article 8 of that Ordinance. Active recreation areas will include at least the following; one tot lot; one playground; two picnic areas and a gazebo. Such facilities will be constructed concurrent with the development of buildings which abut the various recreation areas. In addition, a bathhouse with an approximately 500 square foot meeting room and swimming pool of approximately 1,500 square feet, at the location shown on the Rezoning Plat will be provided. The pool and bathhouse/meeting room facilities will be constructed and available for use prior to the issuance of the 150th zoning permit on the Property.

On a one time basis, approximately 6 months prior to the start of construction of the pool and pool house, membership to the facility will be offered to the property owners whose lots front on Valley Vista Lane, i.e. Parcels 1 thru 17 on Tax Map 107((A2)) and Parcels 79A and 79D, Tax Map 101, for a fee. If any of these property owners elect to join the pool facility, such membership will

be allowed to transfer with any ownership transfer of the property as long as new owners agree to pay required annual fee.

B. **OPEN SPACE EASEMENTS**

With the issuance of each residential zoning permit, the Applicants Owner will make a cash contribution of \$122.00 per unit. Such cash contributions are to be used by Loudoun County for the purchase of open space easements and/or the purchase and development of County parkland within the boundaries of the Dulles Community Planning Area.

C. <u>LANDSCAPING AND BUFFERING</u>

Along the Property's southern boundary, the Applicants Owner will preserve the existing substantial hedgerow to the fullest extent possible. This hedgerow will be incorporated into the plant materials equivalent to a Type IV side yard buffer for the entire length of the boundary, except where utility easements, storm water management ponds and other engineering factors preclude such plantings.

Planting materials for such buffer shall be native species varieties or cultivars thereof. In addition, along the Property's southern boundary and within the required setback, the Applicants Owner will install a 4' high black chain link fence or equivalent.

It is anticipated that there will be two stormwater management/BMP ponds within the project at the locations shown on Sheet 6 – "Rezoning Plat (100 scale)". The ApplicantsOwner will landscape any edges of these facilities which are not part of the dam embankment for the facilities with plantings meeting the requirements of a Type One rear yard buffer. The ApplicantsOwner will place two-6' long benches within each landscaped area. A 4' asphalt trail will connect

each bench to the on-site pedestrian sidewalk system.

D. <u>SIDEWALKS</u>

All internal private streets shall have 4' wide concrete sidewalks on both sides of the streets.

E. TREE SAVE AREA

Within the area identified on the Rezoning Plat as "Tree Save" area, the Applicants Owner shall preserve healthy trees provided, however, that trees may be removed to the extent necessary for the construction of trails and Stormwater Management Facilities that are illustrated on the Rezoning Plat and as lying within such Tree Save area and for the construction of utilities necessary for development of the Property. Applicants Owner shall minimize any such disturbance.

The boundaries of the "Tree Save" area depicted on the Rezoning Plat shall be delineated on the record plat recorded for the development. A Tree Conservation Easement in form approved by the County Attorney shall be recorded for the "Tree Save" area, with such easement to be recorded concurrently with the record plat recorded for the property containing such "Tree Save" area.

If, during construction on the Property and prior to bond release, it is determined by the Applicants Owner's certified arborist and/or the County that any healthy tree located within the boundaries of the Tree Save area described in this proffer has been damaged during construction and will not survive, then the Applicants Owner shall remove each such tree and replace each such tree with two (2) 2 ½ - 3 inch caliper native, non-invasive deciduous trees. The placement of the replacement trees shall be proximate to the area of each such damaged tree so

removed, or in another area as requested by the County.

VII. ARCHITECTURAL TREATMENT

All building facades, which are visible from existing or planned public roadways or which face south, without any other intervening structures between them and the Property's southern boundary, will only use the following materials on these elevations; brick or brick veneer; stone or stone veneer; or fiber cement siding, i.e. Hardiplank or equivalent, or similar type siding material; or some combination of these materials. No vinyl or aluminum siding materials will be allowed on these elevations.

VIII. NATIONAL WILDLIFE FEDERATION PROGRAM

The Applicants Owner will display information regarding the National Wildlife
Federation's Backyard Wildlife Habitat Program (the "Program") in its sales office. The
Applicants Owner will provide to all homebuyers, at the time of settlement, information
packages for the Program and will encourage their participation in the Program.

IX. LINKAGE OF RESIDENTIAL TO NON-RESIDENTIAL DEVELOPMENT

In order to ensure that the mixed use nature of the Business Community and that the Community remains fiscally positive at all times during build-out and achieves a qualitative appearance of a mixed use community, the ApplicantsOwner shall not be permitted to obtain zoning permits for more than a total of 330 residential dwelling units, in combination with such permits issued on ZMAP 2004 0020 and ZCPA 2008 0010, on the Property; unless and until zoning permits have been issued for office, retail, or office/retail commercial development on Parcels 46, 47 and 47A, Tax Map 107, comprising a combined total of a minimum of 77,000 square feet of such uses, excluding any civic uses. A minimum of 22,000 square feet of the 77,000 square feet of commercial development shall be office use.

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X. HOMEOWNER''S ASSOCIATION

Documents to establish Homeowner's Association ("HOA") on the Property will be submitted to the County for review and approval as to form and consistency with these proffers prior to the first record subdivision plat approval or site plan approval, whichever is first in time for residential development on the Property. All unit owners within the property will be members of the HOA. The HOA shall have among its duties trash removal, maintenance of all private roads, storm drainage, storm water management, best management practice facilities, required vegetative buffers, and common areas, including open space, trails, sidewalks, pool/bathhouse and play areas on the Property. The HOA documents will ensure that existing vegetation in the "Tree Save" area as shown are not removed or destroyed. This preservation will include understory and scrub growth except in active recreation areas, utility corridors, and stormwater management/BMP facilities. Such HOA shall be established prior to approval of the first record plat, or first site plan, whichever is first in time for the Property. Additionally, because garages are provided to meet minimum parking requirements, a covenant preventing the garages from being converted to living space, or to any other use that would prevent the garage from being used for parking, shall be included in the HOA documents.

XI. CASH CONTRIBUTION ESCALATION

Unless otherwise provided, any and all cash contributions designated in this proffer statement shall escalate on a yearly basis from the base year of 2006 and change effective each January 1 thereafter based on the Consumer Price Index published by the Bureau of Labor Statistics, United States Department of Labor for the Washington-Baltimore, MD-VA-DC-WV Consolidated Metropolitan Statistical Area. If this Index should cease to be published, then the contributions will escalate in accord with another equivalent Index

mutually agreed upon by the Applicants and the County. Owner and the County.

Notwithstanding any other provisions of these Proffers, the cash equivalent contribution required by Proffer V.F.b. shall escalate on a yearly basis from the base year of 2009.